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No. 922

United States Court of Appeals

FOR THE SECOND CIRCUIT

A 19244

HELLENIC LINES, LTD., as Owner of the SS HELLENIC BEACH,

Libelant,

—against—

SS EXMOUTH, her engines, boilers, etc. and AMERICAN EXPORT LINES, INC.,

Respondent.

A 19486

AMERICAN EXPORT LINES, INC., as Owner of the SS EXMOUTH,

Libelant

—against—

SS HELLENIC BEACH, her engines, boilers, etc. and HELLENIC LINES, LTD.,

Respondent.

APPENDIX FOR LIBELANT-APPELLANT

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United States District Court

EASTERN DISTRICT OF NEW YORK

HELLENIC LINES, LTD., as Owner of the SS HELLENIC BEACH,
Libelant,
—against—
SS EXMOUTH, her engines, boilers, etc. and AMERICAN EXPORT LINES, INC.,
Respondent.

Ad. 19244

Docket Entries—Libel of Hellenic Lines, Limited A-19244

Date	*Docket Entries*
June 16, 1949	Libel and Stipulation for costs filed.
December 15, 1950	Stipulation for costs filed ($350.00).
December 15, 1950	Claim of owner filed.
December 15, 1950	Answer filed.
March 2, 1951	Note of Issue filed.
March 2, 1951	Notice of Trial filed.
April 2, 1951	Byers J. call calendar ready.
December 8, 1954	Notice of motion filed for an order for consolidation of this case with A-19486 for purposes of trial and for all purposes and that a single decree issue (returnable December 15, 1954) (see Ad. 19486).
December 9, 1954	Affidavit filed (James M. Estabrook) (see Ad. 19486).
December 9, 1954	Abruzzo, J. Day calendar.
December 10, 1954	Abruzzo, J. R. subject.

Docket Entries—Libel of Hellenic Lines, Limited A-19244

Date	*Docket Entries*
December 13, 1954	Abruzzo, J. adj. to December 20, 1954.
December 15, 1954	Byers J. above motion granted—no opposition (settle order on notice).
December 17, 1954	By Byers J. Order filed on above motion re: consolidation etc. (see 19486).
December 20, 1954	Abruzzo J. Day calendar adjourned to January 1955 Term.
January 3, 1955	Rayfiel J. Day calendar ready.
January 4, 1955	Trial begun with 19486 and continued to January 5, 1955.
January 5, 1955	Rayfiel J. Trial resumed and continued to January 6, 1955.
January 6, 1955	Rayfiel J. Trial resumed and continued to January 7, 1955.
January 7, 1955	Rayfiel J. Trial resumed and continued to January 10, 1955.
January 10, 1955	Rayfiel J. Trial concluded. Decision reserved. File all papers February 7, 1955.
July 1, 1955	Notice filed re change of firm name.
September 28, 1955	Minutes of Court (Received with opinion and filed on this day).
September 28, 1955	By Rayfiel J. Opinion rendered. Both vessels found at fault. The intervening cargo owners are entitled to an interlocutory decree in their favor. Submit findings, etc. (See opinion.)

Docket Entries—Libel of Hellenic Lines, Limited A-19244

Date	*Docket Entries*
December 7, 1956	Before Inch J. Case called for dismissal. Time to take action extended 30 days.
December 26, 1956	By Rayfiel J. Findings of fact and conclusions of law filed.
December 26, 1956	Interlocutory decree and order of reference filed and entered. Referred to Barnett J. Nova Commissioner (Rayfiel J.).
December 26, 1956	Notice of change of firm name filed from Dow & Symmers to Dow & Stonebridge.
December 31, 1956	Oath of Commissioner filed.
January 10, 1957	Notice of appeal filed (Libelant).
January 10, 1957	Bond on appeal filed.

Docket Entries—Libel of American Export Lines, Inc.
A-19486

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

AMERICAN EXPORT LINES, INC., as owner of the SS EXMOUTH,
Libelant,
—against—
SS HELLENIC BEACH, her engines, boilers, etc. and HELLENIC LINES, LTD.,
Respondent.

Ad. 19486

Date	*Docket Entries*	
June 6, 1950	Libel and stipulation for costs filed	
July 14, 1950	By Byers J. Order filed for leave to file petition to intervene.	
July 17, 1950	Petition of Intervention filed.	
July 17, 1950	Stipulation for costs filed (Intervenors).	
February 5, 1951	Stipulation for costs filed	Hellenic Lines Ltd.
February 5, 1951	Answer filed	Hellenic Lines Ltd.
May 2, 1952	Note of issue filed.	
June 2, 1952	Kennedy J. Call Calendar ready.	
December 9, 1954	(Same entry as Ad. 19244.)	
December 15, 1954	Same.	
December 17, 1954	To January 10, 1955 Same.	
September 28, 1955	Everything but appeal and Bond filed in 19244.	

Libel of Hellenic Lines Limited A-19244

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

HELLENIC LINES, LTD., as Owner of the SS HELLENIC BEACH, *Libellant,* *—against—* SS EXMOUTH, her engines, boilers, etc. and AMERICAN EXPORT LINES, INC., *Respondents.*	A 19244

TO THE HONORABLE THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

The Libel of Hellenic Lines, Ltd., as owner of the SS HELLENIC BEACH, against the SS EXMOUTH, her engines, boilers, etc. and American Export Lines, Inc. in a cause of collision, civil and maritime, alleges upon information and belief as follows:

FIRST: At all times hereinafter mentioned, the libellant, Hellenic Lines, Ltd., was and now is a corporation organized and existing under and by virtue of the laws of the Kingdom of Greece, and it was and still is the owner of the SS HELLENIC BEACH which, prior to the collision hereinafter described, was staunch, tight and strong and in all respects seaworthy and properly manned, officered, equipped and supplied.

Libel of Hellenic Lines Limited A-19244

SECOND: That the SS EXMOUTH is now, or will b during the pendency of process herein, within this Distric and within the jurisdiction of this Honorable Court.

THIRD: At all times hereinafter mentioned, the Re spondent, American Export Lines, Inc., was and now is a corporation organized and existing and by virtue of the laws of the State of New York and was and now is the owner and operator of the SS EXMOUTH.

FOURTH: On the morning of June 5, 1949, the SS HELLENIC BEACH, while enroute from Philadelphia to New York, with about 4000 tons of grain and about 300 tons of general cargo, her draft being 17' 7" forward and 21' 1" aft, dropped her Delaware River pilot at 1:50 a. m. approxi- mately 1-$^{5}/_{10}$ miles from Overfalls Lightship, which bore approximately 110° true. At about 1:52 a. m., the SS HELLENIC BEACH proceeded enroute to sea on a course of 124° true. The Master was on the bridge directing the vessel's navigation and with him were the Second Officer and an Able-bodied Seaman, who was at the wheel. Another seaman was stationed on the forecastle head keeping look- out. It was dark and the SS HELLENIC BEACH had the regulation navigation lights properly set and burning brightly. The weather at this time was clear, visibility four to five miles, calm with no wind and the tide at flood.

After proceeding for about three minutes on a course of 124° true, those aboard the SS HELLENIC BEACH ob- served another vessel (which vessel later proved to be the SS EXMOUTH) showing her green light and apparently steering approximately 250° true, bearing about three (3) points off the port bow of the SS HELLENIC BEACH. The masthead and range lights of the SS EXMOUTH bore on the

SS HELLENIC BEACH's port bow and were open, indicating that the SS EXMOUTH was on a course angling across the bow of the SS HELLENIC BEACH, showing her green light to the SS HELLENIC BEACH.

When the SS EXMOUTH was approximately one-half mile distant, the SS HELLENIC BEACH blew a one-blast signal, which was unanswered by the SS EXMOUTH. About two minutes later, the SS HELLENIC BEACH blew another one-blast signal, which was answered with a two-blast signal by the SS EXMOUTH. Immediately upon hearing this crossed signal, the SS HELLENIC BEACH put her engines full astern and her helm hard right, causing the SS HELLENIC BEACH to lose some of her headway and to turn about 30° right. However, the action of the SS HELLENIC BEACH was not sufficient to avert collision with the SS EXMOUTH, which vessel neither altered course or speed and continued across the course of the SS HELLENIC BEACH, the vessels coming into collision at about 0202 with the port bow of the SS HELLENIC BEACH striking the starboard side of the SS EXMOUTH at about just aft of the Engine Room and No. 4 hold, the angle being approximately 60°. The bow of the SS HELLENIC BEACH did not become locked in the starboard side of the SS EXMOUTH but slid off, clearing the stern of the SS EXMOUTH. As a result of the collision, the SS HELLENIC BEACH sustained serious damage and was compelled to effect immediate repair of the damage upon her arrival at New York.

FIFTH: The aforesaid collision and the damage resulting thereform were not caused or contributed by any fault or negligence on the part of those in charge of the SS HELLENIC BEACH but were caused wholly by, and due solely to, fault and negligence on the part of those in charge

of the SS EXMOUTH in the following particulars, among others, which will be brought out upon the trial.

1(a). She was not under command.

(b). She was not in charge of competent persons.

2. She failed to keep a good lookout.

3. She was proceeding at an immoderate rate of speed under the circumstances.

4. She failed to properly answer the signals given by the SS HELLENIC BEACH, the holding on vessel in a crossing situation.

5. She failed to observe the starboard hand rule and keep out of the way of the SS HELLENIC BEACH as required by Article 19.

6. She failed to avoid crossing ahead of the SS HELLENIC BEACH although all the circumstances admitted her passing astern of said vessel.

7. She failed to slacken her speed or stop or reverse when danger of collision was or should have been apparent.

8. She failed to keep on her starboard side of the channel as she was required to do under the provisions of Article 25 of the Inland Rules.

9. She did not do anything to avoid said collision.

SIXTH: By reason of the premises and as a result of the collision, Libellant has sustained heavy damage consisting of the cost of repairing, the loss of use of the vessel, rehandling and reshipment of cargo, wharfage expenses for cargo awaiting shipment, losses resulting from cancellation of bookings due to the delay in sailing, and other substantial expenses necessarily incurred and to be incurred as a result of the collision which, so nearly as can be estimated at present, will amount to One Hundred Fifty Thousand Dollars ($150,000.00), no part of which sum has been paid, although payment therefor has been duly demanded.

SEVENTH: All and singular the premises are true and within the Admiralty jurisdiction of the United States and of this Honorable Court.

WHEREFORE, Libellant prays:

1. That process in due form of law according to the practice of this Honorable Court in cause of Admiralty and Maritime jurisdiction may issue against the Steamship EXMOUTH, her engines, boilers, tackle, apparel and furniture.

2. And that all persons claiming any interest therein may be required to appear and answer on oath, all and singular the matters aforesaid.

3. And that Libellant may have a decree for its damages as aforesaid, with interest and costs.

4. And that said Steamship EXMOUTH may be condemned and sold to satisfy the damages of the Libellant as herein set forth.

Libel of Hellenic Lines Limited A-19244

5. And that process in due form of law according to the practice of this Honorable Court may issue against Respondent, American Export Lines, Inc., citing it to appear and answer on oath the matters and things aforesaid.

6. And that this Honorable Court may adjudge and decree that Respondent, American Export Lines, Inc., pay to the Libellant its damages as aforesaid with interest and costs.

7. And that this Honorable Court will decree to Libellant such other and further relief as in law and justice Libellant may be entitled to receive.

HELLENIC LINES, LTD.

By: P. G. CALLIMANOPULOS
P. G. Callimanopulos,
Attorney-in-Fact.

Libel of Hellenic Lines Limited A-19244

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

P. G. CALLIMANOPULOS, being duly sworn, deposes and says:

That he is the Attorney-in-Fact of HELLENIC LINES, LTD., the Libellant herein; that he has read the foregoing libel and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, he believes it to be true.

That the reason this verification is made by deponent is that Libellant is a corporation, and deponent is the Attorney-in-Fact thereof.

That the sources of deponent's information and the grounds of his belief as to all matters not stated in the Libel to be alleged upon his own knowledge, are reports made to him by employees and records of said corporation.

Subscribed and sworn to before
me this 10 day of June, 1949.

P. G. CALLIMANOPULOS

SHERMAN V. PETRIE JR.

SHERMAN V. PETRIE JR.
Notary Public, State of New York
60-3077500
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1951

Cross-Libel of American Export Lines, Inc. A-19486

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

HELLENIC LINES, LTD., as Owner of the SS HELLENIC BEACH,
Libelant,

—against—

SS EXMOUTH, her engines, boilers, etc. and AMERICAN EXPORT LINES, INC.,
Respondents.

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

The Cross-Libel of American Export Lines, Inc., as owner of the SS EXMOUTH, and as bailee of cargo laden thereon, against the SS HELLENIC BEACH and Hellenic Lines, Ltd., owner thereof, in a cause of collision, civil and maritime, alleges upon information and belief as follows:

FIRST: At all times herein mentioned, cross-libelant was and still is a corporation organized and existing under and by virtue of the laws of the State of New York, and the owner of the SS EXMOUTH, which, until the collision hereinafter set forth, was in all respects in good condition and properly manned.

SECOND: That at all times herein mentioned, respondent Hellenic Lines, Ltd. was and still is a corporation organized

and existing under and by virtue of the laws of the Kingdom of Greece and the owner and operator of the SS HELLENIC BEACH.

THIRD: The steamship HELLENIC BEACH is now or will be during the pendency of process hereunder within this district and within the jurisdiction of this Honorable Court.

On the evening of June 4, 1949, the SS EXMOUTH was bound from New York for Philadelphia with about 133 tons of cargo on board. At approximately 8:30 P. M., a thick fog set in and at 10:22 P. M. the SS EXMOUTH dropped anchor approximately one and one-half miles southeast of Overfalls Light Vessel.

At approximately 1:42 A. M. on the morning of June 5, 1949, the fog lifted, and at 1:51 A. M. the SS EXMOUTH weighed anchor and shaped her course so as to pass the Overfalls Light Vessel close aboard eventually steadying on a course of 260° at a speed of approximately 13 knots. The Master was on the bridge directing the vessel's navigation, and with him were the Third Officer and an Able-Bodied Seaman, who was at the wheel. The Chief Officer was stationed on the forecastle head keeping lookout. Visibility was three to four miles and the tide was at flood. It was dark and the SS EXMOUTH had the regulation navigation lights properly set and burning brightly. There was a gentle northeasterly breeze.

Shortly after steadying on the course of 260° those on board the SS EXMOUTH observed the mast-head range light and red side light of another vessel which later proved to be the SS HELLENIC BEACH bearing approximately 15° on the starboard bow at a distance of approximately one mile.

At 2:00 A. M. the Overfalls Light Vessel was abeam to starboard of the SS EXMOUTH and close by. The SS

HELLENIC BEACH continued closing rapidly and in order to avoid collision the SS EXMOUTH put her wheel to port and sounded two blasts on her whistle, which was answered by two blasts from the SS HELLENIC BEACH. The SS HELLENIC BEACH continued on her course and the SS EXMOUTH continued swinging to port. Before the collision the SS HELLENIC BEACH swung hard right. At approximately 2:05 A. M. the bow of the SS HELLENIC BEACH violently struck the starboard side of the SS EXMOUTH in the vicinity of the after engine room bulkhead and No. 4 hold, the angle of the collision being about 75°. The bow of the HELLENIC BEACH slid along the starboard side until it cleared the stern of the SS EXMOUTH. As a result of the collision the SS EXMOUTH sustained serious damage and was compelled to effect immediate repair of the damage upon her arrival at New York. In addition the said cargo was damaged and several crew members of the SS EXMOUTH sustained injuries at the time of the collision.

FOURTH: The collision was caused without fault on the part of the cross-libelant or of the SS EXMOUTH or those in charge of her, and was caused solely by the fault and negligence of the SS HELLENIC BEACH and those in charge of her in the following particulars, among others, which will be pointed out upon the trial:

1. She was not in charge of competent persons.
2. She failed to keep a good lookout.
3. She navigated at excessive speed under the circumstances.
4. She failed to maintain course and speed as the privileged vessel is required to do in a crossing situation.

5. She blew a rudder-signal without altering her course in violation of Article 28 of the International Rules.

6. She took no adequate or timely measure to avoid collision.

7. She improperly answered the rudder signal of the SS EXMOUTH in violation of Article 28 of the International Rules.

FIFTH: By reason of the premises the cross-libelant, as owner of the SS EXMOUTH and as bailee of cargo laden on board, has sustained damages in the cost of repairs and other expenses and losses and will sustain further damages all in the sum of Two Hundred and Fifty Thousand ($250,000) Dollars as nearly as can be estimated, no part of which has been paid, although duly demanded.

SIXTH: This proceeding is brought by cross-libelant on its own behalf as owner of and as bailee of cargo laden on board the SS EXMOUTH and also as agent for the owners and consignees of said cargo, as well as for any and all persons who may be entitled to damages for damage and detention thereto.

SEVENTH: All and singular the premises are true and within the Admiralty and Maritime jurisdiction of this Honorable Court.

WHEREFORE, the cross libelant prays:

1. That process in due form of law, according to the practice of this Honorable Court in causes of Admiralty and Maritime jurisdiction may issue against the SS HELLENIC BEACH, her engines, boilers, etc.

2. And that all persons claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid.

3. And that cross-libelant may have a decree for its damages with interest and costs.

4. And that the said SS HELLENIC BEACH may be condemned and sold to satisfy the damages of the cross-libelant herein.

5. And that process in due form of law according to the practice of this Honorable Court may issue against the respondent, Hellenic Lines, Ltd., citing it to appear and answer all and singular the matters aforesaid.

6. And that this Honorable Court may adjudge and decree that the respondent Hellenic Lines, Ltd., pay to the cross-libelant its damages as aforesaid with interest and costs.

7. And that the Court will grant to the cross-libelant such other and further relief as may be just.

HAIGHT, DEMING, GARDNER,
POOR & HAVENS
Proctors for Cross-Libelant
80 Broad Street
New York 4, N. Y.

Cross-Libel of American Export Lines, Inc. A-19486

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

H. M. GILLESPIE, being duly sworn, deposes and says that he is the Vice-President, Secretary-Treasurer of AMERICAN EXPORT LINES, INC., the cross-libelant in the above matter.

That he has read the foregoing cross-libel and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

That the sources of deponent's information and the grounds for his belief are reports made to him by employees of said cross-libelant in charge of the matters referred to in said cross-libel, and examination of the records of said cross-libelant concerning the matters referred to in said cross-libel.

That the reason this verification is made by deponent and not by the said cross-libelant is that cross-libelant AMERICAN EXPORT LINES, INC. is a corporation and deponent is an officer thereof, to wit, its Vice-President, Secretary-Treasurer.

H. M. GILLESPIE

Sworn to before me this
6th day of June, 1950.

SHIRLEY DORSKY

SHIRLEY DORSKY
Notary Public State of N. Y.
Cert. filed N. Y. Cty. Clk.
No. 24-6070900
Qual. Kings Cty.
Term expires 3/30/52

Answer of American Export Lines, Inc. A-19244

To the Honorable the Judges of the United States District Court for the Eastern District of New York

The answer of American Export Lines, Inc., respondent, to the libel of Heilenic Lines, Ltd., as owner of the S/S Hellenic Beach, in a cause of collision, civil and maritime, alleges upon information and belief as follows:

First: Admits libelant was and now is a Greek corporation, and the owner of the S/S Hellenic Beach; except as so specifically admitted, denies each and every other allegation contained in the First article of the libel.

Second: Admits the allegations contained in the Second article of the libel.

Third: Admits the allegations contained in the Third article of the libel.

Fourth: Admits that a collision occurred between the S/S Hellenic Beach and the S/S Exmouth in the vicinity of Overfalls Light Vessel on the morning of June 5, 1949, at which time the visibility was three to four miles, and the tide was at flood, and except as hereinafter expressly admitted, denies each and every other allegation contained in the Fourth article of the libel.

Fifth: Denies each and every allegation contained in the Fifth article of the libel.

Sixth: Admits that no part of the sum stated in the Sixth article of the libel has been paid by it although de-

manded, and denies each and every other allegation contained in the Sixth article of the libel.

SEVENTH: Admits the admiralty jurisdiction of the United States and of this Honorable Court, and denies the other allegations contained in the Seventh article of the libel.

FURTHER ANSWERING THE LIBEL, CLAIMANT-RESPONDENT ALLEGES UPON INFORMATION AND BELIEF AS FOLLOWS:

EIGHTH: On the evening of June 4, 1949, the S/S EXMOUTH was bound from New York to Philadelphia with about 133 tons of cargo on board. At approximately 8:30 P. M., a thick fog set in and at 10:22 P. M. the S/S EXMOUTH dropped anchor approximately one and one-half miles southeast of Overfalls Light Vessel.

At approximately 1:42 A. M. on the morning of June 5, 1949, the fog lifted, and at 1:51 A. M. the S/S EXMOUTH weighed anchor and shaped her course so as to pass the Overfalls Light Vessel close aboard eventually steadying on a course of about 260° at a speed of approximately 13 knots. The master was on the bridge directing the vessel's navigation, and with him were the third officer and able-bodied seaman, who was at the wheel. The chief officer was stationed on the forecastle head keeping lookout. Visibility was three to four miles and the tide was at flood. It was dark and the S/S EXMOUTH had the regulation navigation lights properly set and burning brightly. There was a gentle northeasterly breeze.

Shortly after steadying on the course of about 260° the mast-head range light and red-side light of another vessel which later proved to be the S/S HELLENIC BEACH were observed by those aboard the S/S EXMOUTH which lights were bearing approximately 15° on the starboard bow at a distance of approximately one mile.

At 2:00 A. M. the Overfalls Light Vessel was abeam to starboard of the S/S EXMOUTH and close by. The S/S HELLENIC BEACH continued closing rapidly and in order to avoid collision the S/S EXMOUTH put her wheel to port and sounded two blasts on her whistle which were answered by two blasts from the S/S HELLENIC BEACH. The S/S HELLENIC BEACH continued on her course and the S/S EXMOUTH continued swinging to port. Before the collision the S/S HELLENIC BEACH swung hard right. At approximately 2:05 A. M. the bow of the S/S HELLENIC BEACH violently struck the starboard side of the S/S EXMOUTH in the vicinity of the after engine room bulkhead and No. 4 hold, the angle of collision being about 75°. The bow of the S/S HELLENIC BEACH slid along the starboard side of the EXMOUTH until it cleared the stern of the S/S EXMOUTH. As a result of the collision the S/S EXMOUTH sustained serious damage and was compelled to effect immediate repair of the damage upon her arrival at New York. In addition the cargo was damaged and several crew members of the S/S EXMOUTH sustained injuries at the time of the collision.

NINTH: All and singular the premises are true.

WHEREFORE, claimant-respondent prays that the libel herein may be dismissed with costs and that it may have such other and further relief as may be just.

HAIGHT, DEMING, GARDNER, POOR & HAVENS

Proctors for Claimant-Respondent
80 Broad Street
New York 4, N. Y.

Answer of American Export Lines, Inc. A-19244

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

C. J. KINNEY, being duly sworn, deposes and says that he is the Secretary-Treasurer of AMERICAN EXPORT LINES, INC., the claimant-respondent above named.

That he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

That the sources of deponent's information and the grounds for his belief are reports made to him by employees of said claimant-respondent in charge of the matters referred to in said answer, and examination of the records of said claimant-respondent concerning the matters referred to in said answer.

That the reason this verification is made by deponent and not by the said claimant-respondent is that claimant-respondent AMERICAN EXPORT LINES, INC. is a corporation and deponent is an officer thereof, to wit, its Secretary-Treasurer.

C. J. KINNEY

Sworn to before me this
15th day of December, 1950.

SHIRLEY DORSKY
Notary Public

SHIRLEY DORSKY
State of N. Y.
No. 24-6070900
Qual. in Kings Co. Cert.
filed in N. Y. Co. Clks. off.

Answer of Hellenic Lines, Limited

To the Honorable the Judges of the United States District Court for the Eastern District of New York

The answer of Hellenic Lines, Ltd., cross respondent to the cross libel of American Export Lines, Inc., as owner of the SS Exmouth, in a cause of collision, civil and maritime, alleges upon information and belief as follows:

First: Admits cross libelant was and now is a New York corporation and the owner of the SS Exmouth; except as so specifically admitted denies each and every other allegation contained in the First Article of the cross libel.

Second: Admits the allegations contained in the second article of the cross libel.

Third: Admits that the SS Hellenic Beach is now or will be during the pendancy of process here under within this district and within the jurisdiction of this Honorable Court but except as admitted denies each and every allegation contained in article Third of the cross libel.

Fourth: Denies each and every allegation contained in the Fourth Article of the libel.

Fifth: Denies each and every allegation contained in the Fifth Article of the libel.

Sixth: Denies information sufficient to form a belief as to the allegations contained in Article Sixth of the cross libel.

SEVENTH: Admits the admiralty jurisdiction of the United States and of this Honorable Court and denies all other allegations contained in Article Seventh of the cross libel.

FURTHER ANSWERING THE CROSS LIBEL CROSS RESPONDENT ALLEGES UPON INFORMATION AND BELIEF AS FOLLOWS:

EIGHTH: On the morning of June 5, 1949, the SS HELLENIC BEACH, while enroute from Philadelphia to New York, with about 5000 tons of grain and about 300 tons of general cargo, her draft being 17' 7" forward and 21' 1" aft, dropped her Delaware River pilot at 1:50 a. m. approximately 1-4/10 miles from Overfalls Lightship, which bore approximately 110° true. At about 1:52 a. m., the SS HELLENIC BEACH proceeded enroute to sea on a course of 124° true. The Master was on the bridge directing the vessel's navigation and with him were the Second Officer and an Able-bodied Seaman, who was at the wheel. Another seaman was stationed on the forecastle head keeping lookout. It was dark and the SS HELLENIC BEACH had the regulation navigation lights properly set and burning brightly. The weather at this time was clear, visibility four to five miles, calm with no wind and the tide at flood.

After proceeding for about three minutes on a course of 124° true those aboard the SS HELLENIC BEACH observed another vessel (which vessel later proved to be the SS EXMOUTH) showing her green light and apparently steering approximately 250° true, bearing about three (3) points off the port bow of the SS HELLENIC BEACH. The masthead and range lights of the SS EXMOUTH bore on the SS HELLENIC BEACH's port bow and were open, indicating that the SS EXMOUTH was on a course angling across the

bow of the SS HELLENIC BEACH, showing her green light to the SS HELLENIC BEACH.

When the SS EXMOUTH was approximately one-half mile distant, the SS HELLENIC BEACH blew a one-blast signal, which was unanswered by the SS EXMOUTH. About two minutes later, the SS HELLENIC BEACH blew another one-blast signal, which was answered with a two-blast signal by the SS EXMOUTH. Immediately upon hearing this crossed signal, the SS HELLENIC BEACH put her engines full astern and her helm hard right, causing the SS HELLENIC BEACH to lose some of her headway and to turn about 30° right. However, the action of the SS HELLENIC BEACH was not sufficient to avert collision with the SS EXMOUTH, which vessel neither altered course or speed and continued across the course of the SS HELLENIC BEACH, the vessels coming into collision at about 0202 with the port bow of the SS HELLENIC BEACH striking the starboard side of the SS EXMOUTH at about just aft of the Engine Room and No. 4 hold, the angle being approximately 60°. The bow of the SS HELLENIC BEACH did not become locked in the starboard side of the SS EXMOUTH but slid off, clearing the stern of the SS EXMOUTH. As a result of the collision, the SS HELLENIC BEACH sustained serious damage and was compelled to effect immediate repair of the damage upon her arrival at New York.

NINTH: All and singular the premises are true.

WHEREFORE, cross respondent prays that the cross libel herein may be dismissed with costs and that it may have such other and further relief as may be just.

DOW & SYMMERS
Proctors for cross-respondent
70 Pine Street
New York, N. Y.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

P. G. CALLIMANOPULOS, being duly sworn, deposes and says:

That he is the Attorney-in-Fact of HELLENIC LINES, LTD., the Libellant herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, he believes it to be true.

That the reason this verification is made by deponent is that Libellant is a corporation, and deponent is the Attorney-in-Fact thereof.

That the sources of deponent's information and the grounds of his belief as to all matters not stated in the answer to be alleged upon his own knowledge, are reports made to him by employees and records of said corporation.

P. G. CALLIMANOPULOS

Subscribed and sworn to before me
this 21st day of December, 1950.

FLORENCE WHITE

FLORENCE WHITE
Notary Public, State of New York
No. 24-0540600
Qualified in Kings County
Certs. filed in Kings & N. Y. Co.
Clerks and Register's offices
Commission Expires March 30, 1952

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

HELLENIC LINES, LTD., owner of SS HELLENIC BEACH, *Libelant,* *vs.* SS EXMOUTH, her engines, boilers, etc., and AMERICAN EXPORT LINES, INC., *Respondent.*	A. #19244.
AMERICAN EXPORT LINES, INC., as owner of the SS EXMOUTH, *Libelant,* *vs.* SS HELLENIC BEACH, her engines, boilers, etc., and HELLENIC LINES, LTD., *Respondent.*	A. #19480.

Brooklyn, New York,
January 4, 1954.

Before:—

HONORABLE LEO F. RAYFIEL,
U. S. D. J.

Appearances:

MESSRS. DOW & SYMMERS,
Proctors for Hellenic Lines,
By WILBUR E. DOW, JR., ESQ., Advocate.

MESSRS. HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Proctors for American Export Lines,
By JAMES M. ESTABROOK, ESQ., and
WALTER DARBY, ESQ., Advocates.

MESSRS. BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Petitioners,
By CHARLES A. VAN HAGEN, JR., ESQ., Advoca e.

[2] The Court: Are we ready to proceed, gentlemen?

Mr. Dow: Yes, your Honor.

The Court: I should like you each to give me a brief opening.

Mr. Dow: If the Court please, five and a half years ago, in June of 1949, the Hellenic Lines steamer, a Liberty ship, had dropped the pilot near the Overfalls Lightship. It was about 2 o'clock in the morning and the night was clear, dark and the visability was four or five miles.

There had been a fog and there was a later fog but there was no fog here at this time.

She dropped her pilot and set a course to clear the lightship and within a couple of minutes observed a vessel on her port side, approaching across her course, and showing a red light. This vessel turned out to be the Exmouth.

The HELLENIC BEACH which was the name of the Hellenic Lines steamer, the HELLENIC BEACH observed it for a while and then blew a one-blast signal. The distance I understand was somewhere around a mile and a half. It was dark and you could just see a light and it was naturally difficult to tell how far a light shows at night.

[3] She received no answer and she believed that her signal had not been heard. She waited a minute or so and blew another one. In response to that she got a two-blast signal. Immediately the Hellenic Beach went full astern and a hard right rudder. They had not quite gotten up to full speed leaving the pilot station some nine minutes before but she was doing about eight knots. She slowed down to five knots or less and the other vessel, without a change in course or speed came right on across her bow.

The Court: Your vessel is the Hellenic Beach?

Mr. Dow: Yes, your Honor.

Mr. Estabrook: Ours is the Exmouth, sir.

Mr. Dow: There was a collision. She did not cut in below the waterline. The Hellenic Beach immediately went to investigate the damage and the pilot boat, which was just a short distance away at that time, blinked to her and wanted to know if she needed assistance. She replied at that time, "We don't know."

One of our men got on the radio and one got on the blinker and the fellow on the blinker tried to raise the other ship but there were no lights aboard the other ship. It turned out that her generators had gone out at the time of the collision and even so no one saw the [4] Hellenic Beach's blinker even though she was blinking to the pilot boat and to the other boat, the Exmouth.

The Exmouth is a Liberty ship—no, I am sorry, sir—it is the Hellenic Beach which is the Liberty ship. The Exmouth is a high powered Victory ship in the 8500-ton class and has a full speed ahead of 17 knots.

The Hellenic Beach is a Liberty of about 2500 horsepower and has a full speed ahead of between 10 and 11 knots.

The Court: At what speed was the Exmouth proceeding?

Mr. Dow: I believe that she was proceeding full speed ahead, sir. They had testified that they were not full speed and maybe they were not, but they were coming along very fast at any rate. The telegraph stated full speed and it never changed from full speed.

The testimony before the Coast Guard was that she never changed her course. It is a rather unexplicable sort of thing unless you know all of the facts. With one vessel proceeding, no matter how fast or slow, if another vessel goes across her bow she is bound to be hit.

Before the Coast Guard the testimony, after a number [5] of witnesses testified, the quartermaster spilled the

beans. He was a Mormon from Salt Lake City and he was not going to do anything but tell the truth and he did—the captain was drunk. The captain was completely tight. He came on the bridge after they had been anchored in the fog, he heaved up the anchor, he ordered full speed ahead and the third mate called his attention to what proved to be the Hellenic Beach coming down on the starboard side showing a red light.

Of course the third mate knew, he being the burdened vessel, that he was to go to his right. They were steering a course, I believe, of around 265 or 270 degrees. At any rate it was very nearly due west. Eventually that course would have carried them right up onto the beach on the other side.

They had to go up to the pilot boat and pass that, the pilot boat from whence the Hellenic Beach had just come. There was no reason for them to go across there which was the one thing or one of the things that astonished the Hellenic Beach. All that the Exmouth had to do was to go 300 degrees and something, which is to say, turn his course 15 or 30 degrees to the right but no, the captain said go left. Here I think it was 317 degrees which would be to the right—no, [6] he said, go left.

The third mate said, "Captain, you mean right, don't you?" And the captain said, "No, I mean left."

The Quartermaster testified he just kept the wheel right there in the meanwhile.

The Court: You are talking now of testimony which was taken by deposition?

Mr. Dow: Partly by deposition, your Honor, and the rest of it before the Coast Guard and presumably the witnesses will testify the same way again.

The third mate and I think we did have his deposition, the third mate said that he was then told to go down into

the chart room and look at the chart and see whether it would be right or left, and in the meantime, during this time, they were coming together.

The third mate says that he dashed down into the chart room and came back up and said, "Yes, Captain, it is right." By that time they had heard what I believe to be the second one-blast signal—they were in the wheelhouse not on the bridge.

The Court: I do not think you need go into further detail now, Mr. Dow.

Mr. Dow: I am sorry. When the one signal came over the captain of the Exmouth blew two but the [7] Quartermaster testified that he never changed course. They never slowed down and they got in a position where they cut right inside the Hellenic Beach's bow. By that time she had reduced speed to somewhere around five knots, maybe less.

Now, that, your Honor, is the substance of this case. It is a sort of textbook case which I have said in my little trial memorandum.

The captain of the Hellenic Beach has been flown here from Athens, and the engineer on watch happened to be on board another vessel sailing from here tomorrow. The mate that was on watch we learned two days after Judge Abruzzo called the calendar, that he had left Port Said a few days before for Yokohoma on another ship.

The Court: Let me ask you gentlemen, how long would your case take to try if you do not have the depositions read to me but rather submit them?

Mr. Dow: My direct examination would not take over 30 or 40 minutes. I don't know how long of course for the cross. I speak now of my examination of the master of the Hellenic Beach. The engineer should take less and those are the only two men that I have.

[8] The Court: Then if the depositions would take much of the time of the trial we may as well dispense with their reading.

I mention this because Mr. Estabrook made some inquiry about it yesterday.

Mr. Estabrook: Your Honor, the Exmouth, a Victory ship, was coming from New York to Philadelphia with 124 tons of cargo. She had very little cargo on board but she had some. I represent the Exmouth and Mr. Van Hagen here represents the cargo.

Our case is as follows: The Exmouth anchored because of heavy fog and was headed out into a flood tide to the southeast with her stern in the vicinity of the Overfalls Lightship.

Then she got under way and swung around to the left, to a westerly course, and she proceeded at a speed of about 12 knots. The 17 knot speed spoken of by Mr. Dow was something else entirely but 12 knots was ordered by the master.

Then the Exmouth swung around to her left and she approached the Overfalls Lightship, a light vessel maintained by the Coast Guard. She was observed by a boatswain mate, 2nd class, who was on watch on the lightship, and she was on a westerly course at 2:02, [9] Exmouth's time.

She continued on and as she passed the light vessel the lights of the Hellenic Beach were observed on her starboard bow. Both vessel's lights were burning brightly and we could see the Hellenic Beach's masthead light, her red side light and her range light. They could see the Exmouth's lights.

Around the light used for heading up for Philadelphia, the captain gave the order to go to the left realizing that if the Exmouth were to swing to the right there would be

danger. It was suggested to him to go to the right but he said, "Hold it a minute, take a look at the chart," and then he gave the order to come left, meaning to pull clear of the Hellenic Beach and then go on up the river when the Hellenic Beach had passed. Unfortunately the order was not carried out.

The helmsman said to him, "Do you mean right, Captain?" And he said, "Left." At any rate they went straight ahead. Both signals were heard on the Exmouth from the Hellenic Beach.

We blew two blasts indicating in international waters that we were coming left. The master heard the Hellenic Beach answer the two blasts. At the last [10] minute the Hellenic Beach was seen to swing to the right a little and the Exmouth swung left a little. The Hellenic Beach rammed the Exmouth at No. 4 hold. The Exmouth was cut below the waterline. Her generators went out. A seaman was injured when she was struck, the seaman was drinking coffee below. The master was knocked down, he was banged on the head and the Hellenic Beach—the Exmouth was making its own repairs and by the time they had gotten her their lights on again and the pumps working, the Hellenic Beach had proceeded on her way to New York.

Mr. Dow: Excuse me—it was not until some time later.

Mr. Estabrook: About 25 minutes later.

As far as the damage to the vessel is concerned, your Honor, the Hellenic Beach did not stand by on account of that. She did not but nevertheless it did not make too much difference to the engine room and it did not make too much difference to the injured man because the Coast Guard came out and took the injured man off.

We then had a lawsuit by the injured man against the American Export Lines. The case came up on pleadings

whereby he alleged negligence in the operation [11] of both vessels and in the second cause of action it was against the Hellenic Lines only.

Each ship denied negligence but admitted negligence against the other ship and put in a prayer for indemnity. We had several discussions and a settlement conference was held where a settlement agreement was worked out subject to proof. It never was approved. Therefore the case proceeded to trial. At the trial the jury brought in a verdict on the negligence count against both defendants. Both motions to set aside the verdict were denied and a judgment was entered and the judgment was satisfied by each defendant paying one-half the amount of the judgment and without consideration of costs, which did not amount to too much, the judgment was in the sum of $90,000.

The Court: Was any appeal taken?

Mr. Estabrook: No, sir. The liability would be based on the same facts as would determine the liability for the collision—in other words, negligent navigation on the part of both vessels. In fact at that time there was a motion made at a pretrial before Judge Leibell, a plaintiff's motion, asking that evidence adduced by depositions taken in the collision case could be used by him. Judge Leibell pointed out [12] that the plaintiff was engaged in drinking coffee at the time of the collision and that there was no question of contributory negligence, that the issues were the same and that testimony taken in one case should be admitted in the other case.

So far as navigation of the vessels is concerned we claim that the Hellenic Beach did not obey the general procedural rules, the rules requiring them to slow or stop in time to avoid a collision. It is certainly clear that you cannot keep the right of way right through another vessel's shellplating.

We tried to avoid the collision but through difficulty in the wheelhouse neither the third mate or the helmsman obeyed the captain's orders.

On the question of intoxication it is a very serious charge and it was made by a helmsman who did not take the oath when he testified before the Coast Guard. He refused to appear at the trial. We tried to find him. He would give an address, we would make an appointment to see him, but we could not find him and therefore, your Honor, we shall object very strenuously to any testimony of his before the Coast Guard being admitted as evidence in this case.

We have the mate's testimony on that point, at [13] the time of the collision and we have testimony as to the master's actions afterwards. The mate did believe that the master was intoxicated. He did not say that the master was drunk. The master was hospitalized and we will show your Honor by the hospital records that he had a concussion.

The Court: Was any reference made to an examination in the hospital about intoxication?

Mr. Estabrook: No, your Honor. His mental condition was quite confused when he finally came up and we got him to the hospital. I think that he went in the hospital about nine days after the collision and the signs of a concussion were still there. There was no medical report whatsoever on the issue of intoxication.

The legal issue here, your Honor, will be that we claim that the facts, having been heard by a jury and the jury having determined that both vessels were at fault, that the decree herein should be one of mutual fault on the part of the Hellenic Beach and the Exmouth, or if not that that the libel of the Hellenic Beach should be dismissed and the claims of the Exmouth be granted in full, or, thirdly, if the Exmouth be held in any fault then the Hellenic Beach

should be held at [14] equal fault in failing to avoid the collision when adequate and timely measures thereto should have been taken.

There was damage to the cargo on the Exmouth by sea water as a result of this collision and of course the cargo comes in and will have the right to recover. If the Exmouth is solely involved they have no right to recover but if the Hellenic Beach is solely involved then the Exmouth's cargo will recover in full from the Hellenic Beach.

Mr. Van Hagen: On that point, may it please the Court, I wish to say that I represent the cargo on the Exmouth. It is with respect to aproximately 300 bales of rock wool. I should like at this time to ask for a stipulation by counsel as follows:

That it be stipulated that the intervening petitioners have an interest in said cargo and that the cargo sustained some damage; and be

FURTHER STIPULATED that if the suit and the cross suit between the owners of the SS Exmouth and the SS Hellenic Beach should result in a decision of sole fault on the part of the Hellenic Beach, or mutual fault on the part of both vessels, that then the cargo intervenors shall be entitled to an appropriate inter- [15] locking decree in their favor, in accordance with such result and that any final decree shall be subject to further proof of interest and further proof of damages unless further stipulated.

The Court: Have either of you gentlemen any objection to entering into such a stipulation?

Mr. Dow: I have no objection.

Mr. Estabrook: Nor I.

* * *

[16] Mr. Dow: Counsel representing Mr. Rivera and Judge Kaufman and Mr. Estabrook were there, and I of course was there. Let me read to your Honor what it says here in the stenographer's minutes.

> "Mr. DeVarco: We are going to have a plaintiff who is going to be in a cast from his hip down for six months and we have got to have a trial within the next week.
>
> "Mr. Dow: Your Honor, will it help any if I do agree to abide the collision case in so far as this case is concerned? I hate to do that but this boy is badly hurt.
>
> "The Court: I think you ought to do it.
>
> "Mr. Dow: All right, I will.
>
> "The Court: I wish you would.
>
> "Mr. Dow: I will make no contribution in settlement whatsoever and the question of how much he he is to receive is between you two fellows, and I hope it is a million dollars.
>
> [17] "The Court: But you will agree to abide the amount determined on in the collision case?
>
> "Mr. Dow: Yes, sir, I will.
>
> "The Court: That is fair enough."

And then the transcript of record has the statement in parentheses as follows:

> "(Mr. Estabrook nods.)"

Then it continues as follows:

> "Mr. DeVarco: As I understand it whatever amount is paid by the American Export Lines will be subject to the collision case in the Eastern District.

"Mr. Dow: Subject to the result of that, that is correct.

"Mr. DeVarco: Subject to it. Subject to the result of that. It won't defer the payment of any settlement.

"Mr. Dow: No. Export will make the initial payment, I hope, promptly and the results will abide the collision case.

"Mr. DeVarco: Well, now, can we have a discussion on the settlement?

"Mr. Dow: No, you won't need me here for that."

Then there was a discussion of settlement and I relied on that as I had every right to do. At the [18] time the settlement was not at all certain because it had been discussed for quite a time previous to that, a $75,000 figure which Mr. Estabrook's underwriters refused to approve so that there was every reason to believe that the thing could go either way, either a settlement or a trial and it went to trial and that agreement stood and it was never abrogated, never changed, never altered and the first I have ever heard of it, by correspondence or in any discussions during the trial which took many days, and subsequent thereto, not a word did I hear until just now.

Let me say that the reason the man was injured was because even though the other ship was coming down no general alarm was rung—just a flick to the mate by the captain's fingers and everything would have cleared up—and immediately after the collision the captain collapsing on deck. The third mate after that rang a general alarm, took the ship over, stopped it and lifted the captain up. The mate's testimony is very clear—the captain mumbled "I did not see it, I did not see it."

Colloquy

The Court: You say that the captain collapsed on deck and you stated that the captain was thrown to the deck. Was he thrown to the deck by reason of the force [19] of the collision?

Mr. Dow: It is perhaps significant, your Honor, that he is the only man on either ship that lost his footing at the time of the collision.

Mr. Estabrook: I would like to read from part of this pretrial record, your Honor, and I read to your Honor as follows:

> "Mr. Cooper: In the event there is no settlement what is the status of the case in terms of trial?
>
> "The Court: We will take that up.
>
> "Mr. Dow: If there is no settlement here—"

At any rate there was further discussion off the record and I agreed to stipulate that the plaintiff and the defendant stipulate and agree that this action be settled, subject to permission, in the sum of $75,000 net over and above any maintenance heretofore paid.

Then this transcript of record shows at the top of the page in parentheses that Mr. Dow left.

Mr. Dow: Yes, at that time I left and the reporter has it here: "(Mr. Dow leaves.)"

Your Honor, you see I was not there then.

Mr. Estabrook: We made no amendments to the pleadings. The defendant made no amendments. Our position is that when the settlement fell through we then had to [20] go to trial as though there had been no discussion beforehand.

The Court: Well, if you will let me have that I will read it.

Mr. Dow: What your Honor will not see in there is the fact that there was a second man injured, the boatswain, who was likewise sitting in the room having a cup of coffee with Rivera. That case was settled and not tried and when it was settled Mr. Estabrook said, "You agree to a settlement of this subject to the results in the collision trial?" And the answer was, "Yes, we do."

Now if that case differed from the other one we did not know about it.

Mr. Estabrook: In the boatswain's case, your Honor, the Hellenic Beach was not a part of it.

The Court: Well, at any rate let us proceed here, gentlemen.

STYLIANOS MACRIS, called as a witness on behalf of the Libelant, having been first duly sworn, testified as follows:

Direct Examination by Mr. Dow:

Q. Where do you live, Captain? [21] A. I live in Athens, Greece.

[21] Q. And what is your business or profession? A. I am a master for the Hellenic Lines, and have been for 23 years.

Q. How long have you held a master's license? A. Since 1939.

Q. What is your present ship, Captain? A. The Hellenic Sailor, which is the flagship of the company.

Q. What sort of a vessel is she? A. She is a C-2, with 6200 horsepower.

Q. And you are the Commodore therefore of the Hellenic Line fleet, are you? A. I think so.

Q. On June 5, 1948 were you— A. I think you mean 1949.

Q. You are right. On June 5, 1949, were you captain of one of the Hellenic Line ships? A. Yes, I was.

Q. Which one? A. The Hellenic Beach.

Q. What sort of a ship is she? A. She is a Liberty type ship.

The Court: That is the ship involved in this case?

The Witness: That is right, sir.

Q. You were captain of her then? A. Yes, I was.

[22] Q. How long had you been captain of the Hellenic Beach at that time? A. I had been captain of the Hellenic Beach since the beginning of 1947.

Q. So that it was over two years? A. Two and a half years.

Q. How many men did you have aboard your ship at that time, Captain? A. About 37 men at that time.

Q. It was fully manned, is that right? A. Yes, sir, at that time.

Q. What certificate did you have from the classification societies? A. From the American Bureau of Shipping, from Lloyds, certificate of Registry, the Coast Guard certification for carrying passengers.

Q. That is the American Coast Guard? A. The American Coast Guard.

Q. So that you had all of the certificates that you were entitled to or should have, is that correct? A. That is right, sir.

Q. Do you recall whom you had on watch, I know it is a long time ago, but do you recall who you had on watch, the 12 to 4 watch early on the morning of June 5, 1949? [23] A. I remember that the second mate was Mr. Stephanidis. I know that the helmsman, that is the man at the wheel was Mr. Spithas, a sailor. The man on lookout was Mr. Theotocatas.

Q. And the engineer on watch? A. Mr. Zaccas who is here in court.

The Court: The engineer is in the courtroom now?

The Witness: That is correct, sir.

Q. Where were you navigating from at that time? A. We were coming from Philadelphia to New York with a cargo of about 5,000 tons.

Q. What kind of cargo? A. It was grain and a general cargo.

Q. There were about 5,000 tons of grain and a few hundred tons of general cargo; is that correct, Captain? A. It was something like that. Please remember this was five and a half years ago.

Q. I understand, sir. Where were you standing and where was your watch standing when you were navigating your ship at that time? A. We were on the flying bridge.

Q. And is that open to the weather all the way around? A. It was open to the weather all the way around, yes, sir.

Q. There is no top over it and there are no windows in [24] front? A. No, except that you have a small wheelhouse where the man at the wheel is standing.

All of the windows and doors were open at that time. I and the second officer were in the open space.

Q. Where was the lookout? A. The lookout was on the forecastle.

Q. And what was the weather like at that time? A. The weather was fairly good, there was no wind and there was no rough sea. There was some light swell and the visibility was good, it was about four to five miles.

Q. Could you see any shore lights? A. Oh, you could see lights on the Delaware shore.

Q. What horsepower is your ship? A. That was 2500 horsepower.

Q. Do you know approximately the percentage of that horsepower, a Liberty ship, has astern? A. I am sorry, but I don't know.

Q. Captain, I show you a document and I ask you what it is. A. This is the scrap log of the Hellenic Beach.

Mr. Dow: Sometimes, your Honor, referred to as the rough log on some ships.

The Court: I understand.

[25] Q. Captain, refreshing your recollection from that log book, if you find it necessary to do so, will you please tell me about what time on the morning of June 5, 1949 you dropped the pilot who had taken you from Philadephia? A. It was 1:50 on the morning of June 5th that we dropped the pilot off the Delaware Bay.

Mr. Dow: I offer this for identification only at the moment, as a libelant's exhibit.

The Court: Referring to the rough log?

Mr. Dow: Yes, sir.

The Court: Very well.

(Rough log referred to received and marked Libelant's Exhibit 1 for identification.)

Q. What time did you proceed, that is, after you dropped the pilot? A. At 1:52 the engines were put full ahead.

Q. And what is your speed full ahead on the Hellenic Beach, Captain? A. About ten and a half or eleven knots.

Q. How long does it take you to get up to that speed, or at that time, loaded as you were after you stopped for example to drop a pilot? A. Oh, I will say maybe 15 minutes.

Q. Did you see any lights belonging to any other ship [26] after dropping the pilot? A. Well, not exactly after dropping the pilot but some time later I saw two masthead lights and a green light of another vessel.

Q. And how did that bear from you? A. Maybe two points on my port bow or maybe four points.

Q. When you saw it could you estimate the distance away at that time? A. Well, it was very difficult to estimate distance at night but I will say approximately that it was a mile and a quarter or maybe less or maybe a little more.

What makes it difficult, Captain, to judge the distance away of a light at night on the water? A. Because you do not see anything between you and the light. You see only the light, you can't see sea level or an island or something.

Q. Does the candle power of the light have anything to do with the judgment of this distance? A. Oh, definitely, yes, it does.

Q. In what way? A. Well, you may see a strong light five miles away and you think it is only two miles away, or you may see a dim light a mile away, and you figure it four miles away.

Q. Now, Captain, when you saw the masthead light, the [27] range light and the side light, the green side light of the other ship on your port bow, approximately at what angle was he approaching your ship—just roughly? A. Well, my heading was 124 degrees and she was heading approximately 260 degrees or 270 degrees, something like that.

Q. Captain, when you saw this other vessel approaching as she was, will you tell this Court what you expected to do and what you expected the other ship to do, under the rules? A. Under the rules I had to hold my course and speed, and the other ship had to turn right and show me the red light after I showed it to her.

Q. Do you mean green to green or red to red "all is well, go ahead"? A. That is right.

Q. Did you blow to that ship at any time, Captain? A. Yes.

Q. What did you blow? A. I blew her one blast.

Q. Did you have any idea of the speed of the other ship at that time? A. No, I could not estimate the speed. Later on however I found out that it was a very fast speed.

Q. How far would you estimate, if you care to, the dis-|28| tance that you were from the other light or lights when you blew the one-blast signal? A. I will say less than a mile.

Q. You are not certain? A. No, I am not certain.

Q. Was there any danger of collision at that time? A. No, sir, not at that time.

Q. This course of 124 degrees that you said you were on, where was that going to carry you? A. That would carry me south of the Overfalls Light Vessel.

Q. Did the other fellow hear you, do you know? A. I believe not.

Q. Then did you make any change in your helm at that time? A. Not then, not at that time.

Q. Did you subsequently blow another one-blast signal? A. I did.

Q. And would you care to tell this Court about where you might have been then, that is, how far apart? A. I will say about three-quarters of a mile.

Q. Could it have been more? A. Maybe more.

Q. Could it have been less? A. I do not think it was less.

Q. And did you get any response to that signal? A. Yes, sir, I did.

[29] Q. What response did you get. A. She blew two blasts.

Q. How soon after your one-blast signal did she blow the two-blast signal? A. After some seconds.

Q. Well, about how many? Was it just a few seconds or a long time or what? In other words, did it sound like a reply to your signal? A. Yes, it was like mine.

Q. Going back a moment, Captain. **A. Yes.**

Q. When you blew your second one-blast signal—— A. Yes, sir.

Q. —and before you got any reply? A. Yes.

Q. In your opinion was there any danger of collision at that time? A. Not yet.

Q. After you received the two-blast reply? A. Yes.

Q. You call that a cross signal, do you not? A. That is right.

Q. From your one-blast on did you then consider there was danger of collision? A. Then the danger of collision was happening.

Q. And what did you do? A. I put my helm hard right and full astern on my engines.

[30] Q. How quickly did you do that? A. Immediately after I heard the signal from the other vessel.

Q. Did you get an immediate response? A. Immediate.

Q. The reversing of the engines on a Liberty ship takes how long to operate? A. Oh, a very few seconds.

Q. Could you feel the vibrations of a vessel going astern when you are on the bridge, the flying bridge? A. Oh, definitely.

Q. So that there was no doubt about the response that you got? A. That is right.

Q. Captain, you have a right-hand propeller? A. That's right.

Q. When you are going ahead? A. Yes.

Q. And when you go astern what is the effect of a right-hand propeller, going astern? A. It turns the ship's head to the right and the ship's stern to the left.

Q. So that when you go full astern, put your helm hard right, that gives you what, does it give you the maximum turning power of your ship? A. That is correct.

Q. In other words, you are using both your rudder and [31] your propeller to turn it? A. That is right.

Q. And you could not turn it any faster? A. No, I could not turn it any faster.

Q. When you came into contact with the SS Exmouth, do you know your approximate heading or how much you had turned in that time? A. I will say perhaps we had turned about 30 degrees or 40 degrees to the right.

Q. And approximately how had it affected your speed, this maneuver? A. At the time of the impact, you mean?

Q. Yes. A. Our speed was not more than four or five knots—even less than that.

Q. What do you estimate you had been going just prior to that when you had your engines full astern? A. Less than nine miles.

Q. Did you blow any other signals, Captain, after you received the two-blast signal and had put your engine full astern, and your helm hard right? A. No, sir, I don't remember but I gather from the testimony of the third officer of the Exmouth that I did blow an alarm signal. I mean by that several short blasts and I suppose I did.

[32] Q. Would that be the thing to do, the natural thing to do? A. It was something that I had to do.

Q. But you have no independent recollection of having done it at the time? A. No, I am sorry.

Q. Captain, after your engines were put astern and your helm hard right, can you estimate the time that elapsed before the time of the collision? A. More than one minute.

Q. Did you have a clock up on the flying bridge? A. No, we do not have any clock and we have no light.

Q. Why don't you have a light up there? A. Because it would bother us in navigation.

Q. It would tend to blind you, is that what you mean? A. That is right.

Q. So that the period of time that you are giving here to us is just an estimate, is that so? A. It is just an estimate, just an approximation.

Q. Could you see the other ship as she passed *your bow*? A. Yes, I could see it.

Q. Could you estimate the speed at which she went by you? A. I know it was more than 15 knots—I estimate it at more than 15 knots.

Q. But you cannot be sure of that? [33] A. No, I could not be sure.

Q. Captain, what did you do immediately after the impact? Just tell the Court in your own words. A. I put the searchlight on the other vessel and we found out that she was the Exmouth of New York.

Q. You could see that on the ship in the light of the searchlight? A. Yes, sir.

Q. Were there any lights on the other ship, speaking now after the collision? A. I did not see any.

Q. Did you either send or receive any messages on your blinker light? A. We received some signal from the pilot boat who was nearby asking us if we needed any assistance.

Q. And what did you reply? A. We replied that we don't know yet, that we could not tell.

At that time we were looking out to find out what damage we did have.

Q. Where is your blinker located? A. On the port side of the flying bridge.

Q. And that is where the key is located? A. Yes, the blinker and the key. The key is on the blinker itself.

[34] Q. And who operated that? A. That was operated by the chief radio man.

Q. Whom you had on board. A. Oh, yes.

Q. I mean up on the flying bridge? A. Yes. The other man was in the radio room.

Q. Did you receive or hear any radio signals at that time? A. No.

Q. Did you try to blink to the Exmouth? A. No, we did not try.

Q. You did however blink to the pilot boat? A. Yes, in reply to their signals to us.

Q. Eventually when you had examined your damage did you advise the pilot boat again? A. We did.

Q. What did you say? A. We told them that we did not need assistance.

Q. About how long after the collision was that? A. About 15 minutes, I would judge.

Q. Can you say whether or not you any longer saw the Exmouth at that time? A. About that time I could not see it any more because she drifted away and she went into a fog bank.

Q. Did you ever hear her on the radio? [35] A. No.

Q. Did the pilot boat communicate with her by blinker, do you know? A. I think so.

Q. You think she did? A. Yes.

The Court: What did the witness state the visibility was at this time?

Mr. Dow: Four or five miles. There had been fog earlier, your Honor, and there was more fog

later, but at that time he said that he could see the lights on the Delaware shore.

At the time of the collision there was no visibility problem here at all.

The Court: The reason I asked the question is because he stated he could not see the Exmouth any longer because she went into a fog bank.

The Witness: Yes, because at that time the fog fell again and covered up everything.

By Mr. Doze:

Q. But there was no question of visibility at the time of the collision? A. No, sir. At the time of the collision the visibility was excellent—I mean up to five miles.

Q. From the damage which you found on your own ship as [30] a seaman were you able to tell roughly the sort of damage inflicted upon the other ship?

Mr. Estabrook: I object to that question, your Honor.

The Court: Yes, objection sustained.

Q. Were you concerned about the safety of the other vessel after the collision? A. Well, yes, definitely, but we did not see any danger of her sinking.

Q. Why is that? A. Because the damage was far above the waterline.

Q. On your ship? A. On our ship, yes, and consequently on the other ship too.

* * *

Q. Captain, will you explain to the Court how you were able to judge that the other vessel was in no danger of sinking from the damage which you sustained on your ship?

A. Because the damage on our ship was several feet above [37] the waterline.

That means that our ship was hit high above the waterline and where the two ships collided it would be at the same height above the waterline.

The Court: Were they carrying the same weight, did they lay in the water in the same way; was their freeboard the same?

The Witness: The two boats were in contact.

If one boat contacts five feet above the water it would be the same thing on the other boat too.

By Mr. Dow:

Q. Do you mean the waterline is the same for both ships? A. The waterline is the same for both ships, yes.

* * *

[38] Q. I hand you this paper, Captain. Will you show the Court what you mean by a sketch. A. Yes, sir, I will try. This is your waterline (sketching). This is the head of my ship and this is the side of the other ship because the head of my ship went on the side of the other ship (sketching).

Our ship found damage up here (indicating) some distance from here (indicating)—she went inside the shell of the ship.

The Court: What the witness is showing the Court in this diagram is a line which he characterizes as the waterline—not the waterline of the ship itself but the sea line. Naturally, if they were both laying in the water, regardless of how much of the ship's hull was exposed, they would both be struck

above that sea line. I did not understand what the witness meant by the line before. I see now that inevitably the ship struck would have to be struck at a more vulnerable point, I mean at a point lower in the ship's hull than [39] the other.

It is clear to me, gentlemen, it was not before. Thank you.

Mr. Dow: Does your Honor want this sketch put in evidence?

The Court: Oh, no, I don't think so. What the witness is describing now.

By Mr. Dow:

Q. Captain, did you subsequently send any radio messages yourself? A. Later on, I sent a radiogram to my owner.

Q. And what did you advise him? A. I told them all about the collision.

Q. Where were you then proceeding? A. We were proceeding to New York.

Q. Which was your destination in any event, your final destination? A. That is right.

Q. Captain, will you tell us how the deck logbook is kept on your ship? You told us that you were navigating from the flying bridge? A. Yes.

Q. Do you always navigate from the flying bridge? A. We always do.

Q. Do you mean you always do? [40] A. I mean on that Liberty ship.

Q. Have you always practiced that as a master? A. Yes, I have.

Q. That is what that bridge is there for? A. That is right.

Q. You told us that there is no clock and no light up there? A. That's right.

Q. Then tell me, Captain, how does the mate on watch keep up the scrap logbook or what is sometimes known as the deck log? A. By going below to the chart room.

Q. Does he make any notes on anything while he is on the flying bridge—or might he—have you ever seen them do it? A. Yes, he may do that.

Q. Then what does he do with those notes? A. Then he goes down and he puts them in the scrap log.

Q. What happens to any notes made after the entry has been made in the logbook? A. He may find it is not correct and he changes it.

The Court: Is that a receptive answer to your question, Mr. Dow?

Mr. Dow: I shall ask him this question, your Honor.

[41] Q. What happens to the little scraps of paper, if he does use any, after he transfers the notes to the logbook? A. He probably keeps them.

Q. That is customary on a great many ships, is it not? A. Yes.

Q. Ships flying the flags of all nations? A. That is right.

Q. Captain, how is it that you are here in New York at this time? Where is your present command, the Hellenic Sailor? A. I left the ship the day after Christmas and I came here by air.

Q. For what purpose? A. For this trial.

Q. And when are you returning? A. After I am finished.

Q. You are here for no other purpose? A. No other purpose.

Q. And your trip here was at my request, was it not? A. Yes.

Q. Now you have accounted for the engineer? A. Yes.

Q. Is that engineer still on the Hellenic Beach? A. Yes, sir, he is.

Q. And the Hellenic Beach just happens to be in New York today? [42] A. That's right.

Q. When is she sailing, do you know? A. I understand tomorrow night.

Q. Captain, can you tell us where the second mate is who was on watch at the time? A. I think that he is presently on a ship going to Japan.

* * *

[43] *Cross Examination by Mr. Estabrook:*

Q. Captain, how do you feel? A. All right.

Q. You are in good health? A. Sure.

Q. Have you seen a doctor recently? A. Well, what do you mean by recently?

* * *

Q. Do you feel well, Captain? A. Certainly, I feel well.

Q. Have you seen a doctor recently?

* * *

[44] Have you seen a doctor recently—that means in recent months?

The Witness: Maybe in recent months, yes, maybe I saw a doctor.

Q. But you seem to be able to remember and testify here, don't you, Captain? A. Yes.

Q. Captain, I show you this diagram——

Mr. Estabrook: First, your Honor, I ask that it be marked as a respondent's exhibit for identification.

(Diagram referred to received and marked Respondent's Exhibit A for identification, as of this date.)

Q. I show you this diagram which has now been marked Respondent's Exhibit A. It shows, does it not, off to the left, a ship with a slanted bow like the Hellenic Beach, is that right? A. Yes.

Q. And off to the right a ship with a vertical side, like the SS Exmouth? A. That is right.

Q. When you examined the Hellenic Beach right after the collision how far down did you see the damage go in her stem; that is, how close to the water? [45] A. I don't remember.

Q. About four or five feet; was it three feet—— A. Maybe it was five feet.

Q. If the Exmouth was on a steady, even keel she would be damaged to within three or four feet of the water, is that right? A. Yes.

Q. Did the Exmouth heel over when you hit her, do you know? A. I don't know.

Q. If she did heel over you hit her three or four feet from her waterline, when she heeled over that is, would you not? A. I could not tell you.

Q. Well, if she heels over you hit her three or four feet from the water? A. Maybe.

Q. Now, when she rolls back that part that you hit is going to go under water, is it not? A. Maybe.

Q. Can't you say definitely yes or no? A. I cannot.

Q. Well, if a ship heels over—the part that is damaged is going to get higher, isn't it? A. I did not see any scratches on our boat below the damage.

Q. Not on your boat, Captain, but on the Exmouth—when [46] the Exmouth heels over then the damage in her side is going to be higher, isn't it? A. Yes.

Q. And when she rolls back on an even keel again it is going to be lower, isn't it? A. Certainly.

Q. Captain, how was this log book kept on the early morning of Sunday, July 5, 1949; was it kept in the wheelhouse or on the flying bridge? A. In the wheelhouse.

Q. Did the mate have a little piece of paper on which he wrote things down? A. Yes.

Q. I show you a piece of paper and ask you if that is not the paper on which the mate wrote, if you know, the entries on this occasion (handing)? A. Yes, these are the mate's notes.

Mr. Estabrook: I ask to have that paper marked as a respondent's exhibit.

(Notes referred to received and marked Respondent's Exhibit B in evidence.)

Q. Can you read in English what it says there? A. It says: "2.02 A. M., collision with the American steamship Exmouth of New York.

[47] "Pilot boat has asked if we need any assistance. We replied no.

"The Exmouth appears to be able to proceed to port without assistance.

"We examined our damage.

"At 2:30 new fog set in and covered everything.

"Proceeding to New York."

Q. Captain, the mate used that paper to write up the scrap log, did he not? A. It seems so.

Q. On the Hellenic Beach was it permitted to make erasures in a rough log, to make corrections in it? A. We did not have any occasion like this before and we made no erasures before, but in this case the mate told me afterwards that he found that the time in the engine-room was not exactly the same and he did some correcting.

I said that it was not necessary to do that but he did it.

Q. And the log as it is now was correct, is that right?

The Court: Do you want to examine the log, Captain?

The Witness: Yes.

Mr. Dow: Mr. Estabrook, will you point out where you state the erasures are?

[48] The Witness: Yes, will you please show me what you mean? "1:52 full ahead," and this is 2:02 (indicating).

Q. Is that number correct, 2:02? A. It would seem correct.

Q. Will you tell us what the 1.45 is? A. 1:45 means top ahead.

1:50 means stop, and we dropped the pilot.

Q. What is the next entry? A. 1:52 full ahead for our destination.

Q. At 1:52, Captain, did you give any orders to the engine-room? A. Full ahead.

Q. Did you tell them to secure the steam from the reverse engine? A. Just full ahead.

Q. Did you tell the chief engineer that he could leave the engine room? A. I did not see the chief engineer, I have nothing to do with him.

Q. Did you tell them that they were finished with the maneuvering of the vessel? A. That is right.

Q. What is your next entry? A. The next entry is 202, collision.

[49] Q. What else? A. The same thing as I said from the other paper "Collision with the American Steamship Exmouth of New York——"

Q. Captain, how close was the Exmouth when you first thought there was danger of collision? A. It was after I heard the two-blast signal from the Exmouth.

Q. And how far away was she then? A. I could not tell you that.

Q. Well, was she a half a mile? A. Maybe a half a mile, maybe less and maybe more.

Q. Maybe a quarter of a mile? A. I don't know.

Q. When ships are a quarter of a mile apart they are in danger of collision, aren't they, usually that is? A. If they are in opposite directions, yes, that is one crossing the other.

Q. Captain, do you remember testifying in Mr. Dow's office? A. Yes, I remember.

Q. Was I there? A. No, you were not there. I believe it was a Mr. McKown.

Q. He and Mr. Dow had several discussions? A. They had some but I don't remember exactly.

Q. Do you remember being asked these questions, and I read to you now from page 11 of your deposition, and giv-[50]ing these answers:

"Q. Did you blow——

by the way, this was in June 14, 1940, wasn't it? A. That is right, several days after the collision.

Q. And your memory was probably better then than is now? A. It would seem to me to be so.

Q. I shall read to you now from page 12:

> "Q. Did you blow any whistles? A. A litt while later when I first thought the distance w shorter and she did not change course as she had I blew my whistle one blast. I wanted to tell her keep out of my way."

Do you remember being asked that question and makin that answer? A. Yes.

Q. Do you remember being asked this question:

> "Q. How far away was she at that time, about A. A little more than half a mile."

Do you remember that? A. If I said so I admit it.

Q. And that was based on your recollection at that time isn't that right? A. Yes, that was my best recollection.

* * *

[51] *By Mr. Estabrook:*

Q. Captain, do you recognize this sketch that I han you (handling)? [52] A. Yes.

Q. It contains your own handwriting, does it not, sir A. It does.

Q. What does it say, Captain? A. Approximately posi tion and bearing of both vessels and approximate distance

Q. And what is the distance shown? A. It shows her about a half a mile.

> Mr. Dow: Read it correctly, Captain.
>
> The Witness. "Approximate distance, one-hal mile."

Mr. Estabrook: I offer that sketch in evidence.
The Court: Received.

(Sketch referred to received and marked Respondent's Exhibit C.)

Q. Do you remember on cross-examination being asked this question, and I read to you now from page 25, about three-quarters of the way down:

"Q. At that time how far were you from the Exmouth in your opinion? A. About when, the second blast?

"Q. When you sounded your second one-blast signal? A. Maybe a quarter of a mile."

Do you remember being asked those questions and [53] making those answers? A. If it is there, yes.

Q. And do you remember giving that answer, Captain? A. I don't remember well, but I admit what I said there.

Q. At that time your recollection was better than it is now, isn't that correct? A. Yes, I would say so.

Q. Now on page 26 of your deposition I read to you and ask you if you remember being asked this question:

"Q. I think you said that your best estimate was then about a quarter of a mile," and you were discussing then the distance between the ships at the second one-blast signal, and you said:

"A. Yes, about a quarter of a mile when I blew the second blast."

Do you remember being asked that question and making that answer? A. I don't remember but maybe I said it.

Q. Do you remember making that answer? A. I say I don't remember, but if it is in the record I would assume that I did.

I always said that it is very hard to estimate a distance at night—it is very difficult.

Q. Captain, I want you to answer these questions: [54] A. Yes, sir.

Q. I read to you now from page 29:

> "Q. You said I think when you blew the second blast you were about a quarter of a mile apart? A. Yes."

Do you remember being asked that question and making that answer? A. All right. I have no objection.

* * *

> "Q. So you were still approximately a quarter of a mile apart when she"—referring to the Exmouth—"blew her two blast signal; is that correct? A. Yes, it was only after a few seconds."

Do you remember that? A. Yes.

Q. And is that correct? A. It could be correct.

Q. Your recollection was better then than it is now? A. Yes, I suppose so.

Q. Now, Captain, you testified before the Coast Guard, did you not? A. Yes, sir.

Q. And that was on June 8th, three days after the collision? A. Yes, sir.

Q. Your recollection was still better then, wasn't it, [55] than it was at the time of the deposition? A. Yes.

The Court. I do not think it necessary to ask that last question with respect to everything you

read, Mr. Estabrook, because I think the witness has indicated that his recollection was better than it is now.

Q. Were you asked these questions at that time:

"Q. Coming to the first one-blast signal, how far were you apart? A. Perhaps a half a mile.

"Q. What was the bearing of your ship then, was she still in the same position on your bow? A. Yes, in the same position on my port bow, maybe three points.

"Q. In other words, the bearing of your ship had not changed any? A. I had no time to take bearings.

"Q. I am speaking of your estimation watching the ship. You did not consider the bearing to be changed? A. Yes.

"Q. She remained on your starboard bow showing her green light? A. Yes."

Mr. Dow: I think that is a misprint, Mr. [56] Estabrook.

Mr. Estabrook: I accept your correction—it is port bow. I shall now continue:

"Q. That is the time you blew one blast? A. That is right.

"Q. You were about a half a mile apart? A. Yes."

Do you recall that testimony, Captain? A. Yes.

Q. Was it correct? A. Everything that is in there is correct as to what I say.

Q. Do you remember this:

"Q. After that did the bearing change any, did it close in on your bow? A. She closed on my bow but slowly—we go very close all the time. Then I blowed another blast and at that time——

"Q. How close were you when you blew the second one-blast? A. She was nearer to my bow.

"Q. She was closer than a half mile? A. Much closer."

Do you recall that testimony? A. All right.

Q. Was it correct? A. It is correct.

Q. Do you remember this:

[57] "Q. Did you adopt any engine maneuvers at the time? A. Well, as soon as I heard the two blasts from the other vessel I put my engine full astern.

"Q. That was immediately after you had blown the second one? A. Yes, a few seconds."

* * *

Mr. Estabrook: I wish now to read from page 25, the following question and answer:

"Q. Where was your vessel located when you gave the first one-blast signal? A. It was a half mile distant between me and the other vessel."

Do you recall that, Captain? A. All right.

Q. Captain, were you in inland or international waters when you first blew your one-blast signal? A. I believe I was in international waters.

Q. And what does a one-blast signal mean under the international rules? [58] A. It means that I am going to the right.

Q. It means that you are going to change your course to starboard? A. Yes.

Stylianos Macris—For Libelant—Cross

Q. Did you change your course to starboard, after your first one-blast signal? A. No, because I had no answer.

Q. Is an answer required under the international rules, Captain?

Mr. Dow: I object to that question, your Honor. Isn't that a question of law for the Court to decide?

Mr. Estabrook: The purpose of the question is——

The Court: I will overrule the objection. The witness may answer it if he can. Of course I shall take any law that you gentleman have on the subject.

Mr. Estabrook: It is in our memorandum your Honor.

Q. Is an answer required under international rules, Captain? A. No.

Q. When you blew your second one-blast signal did you change your course? A. Yes.

Q. Did you change it before you heard the two blasts from the Exmouth? A. So far as I can now remember I changed my course after I had the signal from the other vessel.

[59] Q. But you did not change your course when you blew the one-blast? A. There was only a second or two between the two signals.

The Court: Between your one-blast and the two-blast signal from the Exmouth you say there was only a second or two?

The Witness: Yes, sir.

Mr. Estabrook: I have no further questions.

The Court: We shall stand in recess then now until 2 o'clock P. M., gentlemen.

(Recess taken until 2 o'clock P. M.)

[60] AFTERNOON SESSION

STYLIANOS MACRIS, resumed:

Mr. Dow: Your Honor, I would like to read a few lines of testimony which followed that which was read by Mr. Estabrook.

If you recall there was a last group of questions and answers which Mr. Estabrook read from the transcript of the Coast Guard hearing. Immediately following, and at the top of page 22 are these words:

"Q. Well, can you give me a little more definitely the distance apart at that time, just between the two ships at the time you reversed your engines? A. When I heard the two blasts?

"Q. How far were you apart then? A. Less than a half a mile.

"Q. Until the collision you kept your engines backing? A. All the time.

"Q. At the time of the collision what was your engine doing? A. Full astern.

"Q. Now can you estimate your headway at the time of the collision? A. At the time of the collision maybe five knots."

Mr. Dow: That is all I have.

[61] The Court: I think the record should show that what you have read were questions asked of the Master, Mr. Macris, now on the witness stand and the answers that he gave at that time.

Mr. Dow: That is correct, sir.

I now offer the log book in evidence as a libelant's exhibit.

The Court: Received.

(Rough logbook of Hellenic Beach heretofore marked Libelant's Exhibit I for identification, received in evidence.)

Mr. Dow: I have no further questions to ask of the captain but I would like your permission, Mr. Estabrook, and that of the court, to permit him to rejoin his ship. If you think you are going to need him again——

The Court: Do you have any further questions at this time, Mr. Estabrook?

Mr. Estabrook: No, your Honor.

(Discussion off the record.)

By Mr. Dow:

Q. Has anybody from Mr. Estabrook's office previously talked to you about a matter that occurred after the Exmouth collision? A. No.

[62] Q. You talked to no one from Mr. Estabrook's office? A. No.

Q. About any case that occurred after this one? A. Yes, they had another case.

The Court: Have you spoken to Mr. Estabrook or any representative of his office about a case?

The Witness: Yes, another man from that office and it was on another case that we have.

By Mr. Dow:

Q. What was his name? A. I don't know his name. I think maybe it was Mr. Deming, about a case that we had with another vessel.

Q. That occurred after this? A. Yes.

Mr. Dow: I never was advised of it, your Honor.

By Mr. Estabrook:

Q. Did anybody ask you any questions about the Exmouth collision? A. When?

Q. In my office. A. About the Exmouth collision?

Q. Yes. A. No, nobody did.

The Court: When is it your intention to leave, Captain?

The Witness: Not sooner than tomorrow.

The Court: I do not think that there has been any impropriety shown, Mr. Dow.

Mr. Dow: It surprises me a little, that is all, [63] your Honor.

* * *

[64] NICHOLAS ZACCAS, called as a witness on behalf of the Libelant, having been first duly sworn, testified as follows:

(Mr. Constantine K. Mertvagos was duly sworn as Interpreter, and states his address is No. 630 Fifth Avenue, care of Berlitz Publications, New York.)

Direct Examination by Mr. Dow:

Q. Mr. Zaccas, where do you live? A. In Piraeus, Greece.

Q. What is your present position? A. Second engineer on the SS Hellenic Beach.

Q. Were you an engineer on the Hellenic Beach on June 5, 1949? A. I was.

Q. How long have you been going to sea, Mr. Zaccas? A. Seven years.

Q. And how old are you? A. 36.

Q. How long have you been an assistant engineer? A. Seven years.

Q. Then I presume you went to sea before you became an assistant engineer? A. I went to school first and then I had my training.

Q. What was your position on the Hellenic Beach on June 5, 1949? [65] A. Third engineer and also rated as a plumber.

Q. And you then had been promoted? A. Yes. I passed a test with the Ministry of Marine, Merchant Marine, and I became a second engineer.

Q. What watch did you have on the Hellenic Beach in June of 1949? A. 12 to 4.

Q. You were on watch then from midnight, June 5th? A. Yes, from midnight.

Q. Now, I show you a document here and ask you if you recognize it (handing). A. Yes, I recognize it.

Q. And what is it? A. That is the engine-room scrap log.

Q. From 12 o'clock midnight until 4 o'clock in the morning did you make entries and do you find those entries in that book? A. Yes, I find that.

Q. And in whose handwriting are they? A. This book is in the handwriting of the three engineers who are on watch.

My handwriting is found from 12 o'clock midnight until 4 A. M., when I was on watch.

Mr. Dow: Although I think it may be already [66] in evidence, your Honor, I offer now in evidence this log book as a libelant's exhibit.

(Scrap log referred to received and marked Libelant's Exhibit 2 in evidence.)

The Court: I take it that by "Libelant's" you now mean your clients, the owners of the Hellenic Beach?

Mr. Dow: We were the first libelant, your Honor, yes.

Q. Beginning with the X mark which means stop at 1:51, will you read the orders and the times from 1:51 until 2:10. Tell us the order and the time. A. It reads, "1:51—stop. 1:52, full speed astern."

Q. Astern? A. Astern. 1:53, stop.

Mr. Dow: Does the witness know whether that was the point where they dropped the pilot?

The Interpreter: Shall I ask him?

Mr. Dow: Yes.

The Witness: Yes, certainly this is the time.

Q. And the order of full speed astern was to take the way off the ship and bring her to a stop so that the pilot could go down the ladder? A. Yes, and the captain also advised us, probably from above to the effect that the pilot is leaving the ship.

Q. And how does he so advise you? [67] By telephone.

Q. Go ahead. A. On top of that we have been standing by all this time because under these conditions the engine is kept at standby during maneuvers. After the order full speed astern, given at 1:52 to disembark the pilot then we have stop at 1:53.

* * *

By Mr. Dow:

Q. Proceed. A. After that we have "full speed ahead—1:55." At 1:56 I got a message from the captain to the effect that the [68] pilot has left the ship.

Q. Continue, please? A. In the meanwhile after that I heard the ship's whistle. It was one long blast and after a while another blast.

Q. Is that in the logbook? A. No. There is no such entry in the logbook.

Q. Is the entry of the captain telephoning down that the pilot had left the ship, is that an entry in the logbook? A. This message was sent by telegraph and that appears under 1:56.

Q. By telephone you mean? A. No, by telegraph.

Captain Macris: I can explain—it was a signal finished with engine maneuvers.

The Witness: That order is by telegraph and shows on the dial, by hand—

Q. Just read what is on there, please. Don't add anything to what you are reading from the bell book.

By that 1:56 order you mean finished maneuvering with the engines; is that it? A. That order has the meaning that the pilot has left the ship and the maneuvering connected with the pilot disembarking is finished.

From that time on we proceed to take action [69] according to orders that we receive from the deck.

Q. What is the next order? A. It reads here, "Full speed astern—2:02."

Q. And the next order? A. The next order reads, "2:10—slow forward or ahead." This here is a matter of second and since I cannot answer every second we have the same time, 2:10 that I marked on here full speed ahead, immediately following the preceding order.

Q. So that slow speed ahead that order and the half speed ahead order came within the same minute? A. Almost at the same time.

Q. Just one more will be enough I think. A. It then says, "2:14—stop."

Q. Did any of these orders which you read us are there any erasures? A. No, sir.

Q. Will you please explain to the Court the procedure for making this bell book.

Is the bell book kept right by the maneuvering throttle? A. It is next to the table of the engine which I use to execute the orders.

There is a little table on which this book is and as soon as I have executed on order I enter it in the book.

Q. And is there a clock right there? A. Yes, there is a clock right there.

[70] Q. When you are on watch, when you are operating on the Coast, are you right there at all times by your throttle and your log desk? A. Yes.

Q. Did you ever leave the log desk even for a moment from the time that you dropped the pilot until you got the full speed astern order? A. I do not leave this place normally and I did not leave it at all on that day because I heard the whistle, and since I knew that we were in a position where we are bound to meet other ships, and after hearing the whistle, I knew that something was happening, and I did not leave that place at all, not for a second.

Q. How long did it take you to put the engines from full ahead to full astern? A. Since I received the order full astern immediately following the preceding one of full ahead, I realized that it was an order of importance so immediately I executed it.

I did not look at the watch at that time but I believe that it was five or ten seconds.

Q. After you were advised that the pilot had left the ship did you do anything to the engines or the reversing

engines that would interfere with a very prompt full astern order? [71] A. No. In fact I acted as speedily as I could.

Q. Mr. Estabrook in his opening statement made some reference to securing the reversing engines.

Is it possible to do such a thing and what did you do? A. I am sorry, but I do not understand.

Q. There has been a reference here to securing the reversing engine.

Did you do it and is it possible to do it? A. No. The appliance used for the forward or astern movement was inactive and I did nothing to isolate it, that is to secure it.

Q. Do you ever do anything to secure it? A. The securing of that appliance sometimes takes place when we are in the ocean, but when we are near the Coast we are always at standby and it is never secured and it is operated from the center room of the engine so that it will always be ready to be used in any direction.

Q. I show you now a document, rather a photostat of a document which was offered in evidence during the deposition of the chief engineer who retained that log, and by stipulation between counsel we had it photostated and the photostat substituted and a translation attached to it.

I show you this document now and ask you if you recognize it (handing). [72] A. Yes.

Q. What is it? A. This is the official log book of the chief engineer.

Q. And in whose handwriting is it? A. It is the handwriting of the chief engineer. No other engineer ever makes any entries in this official log.

Q. I note in the translation of this logbook, in English, which translation as I say is attached to it, that the bell book orders I believe follow exactly the orders found in the original bell book.

Does the chief engineer, if you know, copy the bell book entries into his official logbook? A. Yes, this official log is normally a copy of the other log book and you can see from the contents here the exact description of all the maneuverings done in the port and after leaving port.

Q. Mr. Zaccas, when do you expect to sail? A. Our company has scheduled us to leave tomorrow in the afternoon.

Mr. Dow: Thank you. Your witness.

Cross Examination by Mr. Estabrook:

Q. Mr. Interpreter, please show that paper to the witness (handing).

Mr. Zaccas, on that paper I have written down the [73] symbols that I have found in a copy of a photostat of the exhibit Hellenic Beach Exhibit 2, the scrap log.

Are those symbols correct? A. Yes.

Q. And what does X No. 1 mean? A. It means stop.

Mr. Estabrook: Mr. Interpreter, will you write the word stop right alongside of the numeral 1 on there?

The Interpreter: Yes (marking).

Q. What does the check mark, the No. 2 symbol mean? A. This means slow ahead.

Mr. Estabrook: Will you please write that alongside of No. 2, Mr. Interpreter?

The Intrepreter: Yes (writing).

Q. What does the symbol No. 3, the check mark with one additional vertical mark represent? A. That means half speed ahead.

Mr. Estabrook: Will you please write that, Mr. Interpreter, after the numeral 3?

The Interpreter: Yes (marking).

Q. What does the symbol 4 mean, a check mark with two vertical lines? A. That means full speed ahead.

Mr. Estabrook: Will you please write that?

The Interpreter: I will (writing).

[74] Q. What does the symbol No. 5 mean, a check mark from right to left? A. That means slow astern.

Mr. Estabrook: Will you please write that, sir?

The Interpreter: I will (marking).

Q. What does the symbol No. 6 mean, a check mark from right to left with one vertical line? A. That means half speed astern.

Mr. Estabrook: Will you please write that, Mr. Interpreter?

The Interpreter: I will (writing).

Q. What does the check mark opposite the numeral 7 mean, a check mark from right to left with two vertical lines? A. That means full speed astern.

Mr. Estabrook: Please write that.

The Interpreter: I shall (writing).

Q. What does the symbol No. 8 mean, a check mark from right to left with three vertical lines? A. This mark means——

The Court: Mr. Interpreter, I think the witness should be told to answer these questions as briefly as possible in order to save a hardship on you.

The Witness: (Through Interpreter.) The mark [75] No. 8 was meant to be identical with the mark No. 7, full speed astern, but as I was acting speedily at that time I just did not count the bars and maybe

I have one extra. I did not erase it in order not to have any erasures in the book.

Mr. Estabrook: I offer this paper which has been shown the witness as a respondent's exhibit.

The Court: It will be received.

(Paper containing symbols received and marked Respondent's Exhibit D in evidence.)

The Court: I suppose that is a copy of what you wanted the Court to look at earlier, is it not, Mr. Dow?

Mr. Dow: Yes. There is one more vertical line than the usual two. That was all brought out in this man's deposition, as to why he did it.

The Court: Yes, he just explained it. He said that he was in a hurry and did not count the vertical lines.

Mr. Estabrook: Here is one, your Honor, and here is the other for your inspection (handing to court).

The Court: On No. 8 are those three independent lines?

Mr. Estabrook: Yes, your Honor. He is explaining that the 2:02 entry is really meant to be full astern, [76] with the one extra line.

The Court: I see it. Thank you.

By Mr. Estabrook:

Q. This scrap log, Hellenic Beach Exhibit 2 is a combination of a rough log and the engine-room bell book, is it not? A. Yes.

Q. Now what I would ask you to do is read the entries to us beginning with 1:33 please. A. It reads, "1:33—half speed ahead. 1:37—full speed ahead. 1:42 half speed ahead, and 1:51—stop."

Q. You read the rest of the entries I think to Mr. Dow. Those entries you made yourself, did you not, Mr. Zaccas? A. Right.

Q. Did you put down the time of collision in the scrap engine-room log? A. I did not enter it because I did not see it. Being in the engine-room I do not see what is happening outside.

Q. Did you feel the shock? A. I felt a slight shock but so slight that it hardly moved me.

Q. But you felt something? A. Certainly I felt something.

Q. I show you now the Hellenic Beach chief engineer's log and call your attention to the entries from 1:37—half [77] ahead to 1:43—slow ahead.

You testified in reading your scrap log that 1:37 was full ahead and 1:43 was half ahead. Which is correct, so far as the movements of the ship are concerned? A. It is possible that the chief engineer when copying this (indicating)——

Q. Indicating the scrap log? A. When copying the scrap log made a mistake in transposition and accidentally transposed this sign for that sign and that is how it happened—this came first and the other came after (indicating).

Mr. Dow: What times are those?

Mr. Estabrook: There are three entries, Mr. Dow, namely, 1:33, 1:37 and 1:43.

Q. How did the whistle blast sound to you? A. Strong.

Q. How did the first one sound? A. The first blast was not as strong as the second blast because of the water that is in the pipe—the first blast is always weaker than the blasts that follow.

Q. Can you hear the water in the pipe? A. Well, when I say water—I heard the actual blast, I did not hear any water.

Q. But it was not as strong as the second blast? [78] A. There was a small difference, naturally.

Q. When you came down the river before you dropped the pilot who was in the engine-room besides yourself? A. No one except me because it was my watch.

Q. Was the chief engineer down? A. When we dropped the pilot the chief engineer was there. After that he left. After that it was my job.

Q. When the chief engineer was there did he stand by the throttle or did you? A. I was there.

Q. When you are in the engine-room you have to check the boiler pressures, do you not? A. Yes, certainly.

Q. And you can see the gauge from the log desk, can you not? A. Yes, I can, exactly from that position.

Q. You also have to check the water level, do you not, on a Liberty ship, all the gauges? A. Yes.

Q. And they are all at that very spot? A. I was there and I could see all the gauges.

Q. How long is the engine? A. I could not say exactly, but I would say approximately ten or twelve feet, maybe fifteen or maybe fourteen.

Q. And you have an oiler to go around and oil the [79] engine, do you not? A. Yes, but it is all one unit. The engine and the boiler is all one thing.

Q. But I say you have an oiler to oil the engine, do you not? A. Yes.

Q. And the oiler has to oil the auxiliaries, the generator for instance? A. Yes, that is his job.

Q. And he oils the pumps? A. Yes.

Q. Don't you have to go around and check on the oiler and see that he oils the generators and the pumps? A. I can see him from the place where I am.

Q. When he is on the other side of the engine? A. Well, I can see from there the place where he oils.

Q. When you have finished with maneuvers how is that signal given? A. The order of finishing is transmitted by telegraph.

Q. And what is the purpose of the order? A. The purpose of this is that we start watching the auxiliaries.

Q. And did you start watching the auxiliaries? A. No. I figured before to do it because I heard the whistle.

Q. Before you heard the whistle didn't you start watching the auxiliaries? [80] A. No, we are always at standby as long as we are in the river.

Q. At "finished with maneuvering" you drop the pilot and that was after you had dropped the pilot, wasn't it? A. Yes.

Q. Where was the ship then, do you know? A. I could not tell you exactly since I saw nothing of the space where I am, but I imagine that it was just about to leave the Philadelphia river.

Q. You did not come up on deck then, did you? A. No. How could I?

Q. Are you sure, Mr. Zaccas, that you were not watching the auxiliaries and that when you heard the whistle you ran to the maneuvering station? A. I am absolutely sure of that.

Q. Does this log here which has been marked Hellenic Beach Exhibit 2, contain any separate entries in it for securing the reversing engine or for coming off s andby except the "fin." meaning "finished with engines"? A. For instance there is an entry here in Greek saying, "telos" which is a Greek word and has the same meaning as finish.

This entry has been made after the "finished of all maneuvers." [81] I wrote "finish" or "fin." in English, it means the same thing.

Mr. Estabrook: No further questions.

* * *

[82] Mr. Dow: I will be happy to submit them, your Honor.

I therefore offer in evidence at this time the depositions of Christos Stefanides, Demetrios Legakas ,Chief engineer, Antonio Spithos, helmsman, and Anthony Theotocatos, A. B.

* * *

[83] The Court: Now, Mr. Estabrook, have you any witnesses present here?

Mr. Estabrook: Yes, your Honor.

THOMAS F. COLLINS, called as a witness on behalf of the Respondent, having been first duly sworn, testified as follows:

Direct Examination by Mr. Estabrook:

Q. By whom are you employed, Mr. Collins? A. By the American Export Lines.

Q. What is your position? A. Assistant to the port captain.

Q. With what specific problems do you deal? A. With the hiring of the licensed personnel in the deck department.

Q. Does your office have charge of the personnel files of the company? A. That is right.

Q. The man who was chief officer of the SS Exmouth at the time of this occurrence, is he still in the employ of the American Export Lines? A. He is.

[84] Q. And on what ship is he? A. On the Excelsior.

Q. Where is that ship now, if you know? A. I believe that she is due in Bombay today.

Q. That is Mr. Bernard G. Leimers? A. That is correct.

Q. Now, Mr. Bernard F. Griffin, is he presently in the Export Lines' employ? A. He is no longer in our employ.

Q. And do you know his home address? A. I have a card here. May I refer to it?

Q. Surely. Is that card kept in the regular course of business? A. It is.

Q. What is the address shown on that card? A. No. 474 8th Street, San Pedro, California.

Q. And the lookout, Mr. James Quigley, is he still an employee of the American Export Lines?

The Court: I take it these are men——

Mr. Estabrook: The first two men, your Honor, I have their depositions which I wish to submit or read. As to the others I wish to explain their absence.

The Court: Quigley, you say he is no longer employed by American Export Lines?

The Witness: That is right.

[85] *By Mr. Estabrook:*

Q. How about Max Whitney, who I believe was the helmsman. Is he still employed by the American Export Lines? A. No, sir, he is no longer in our employ.

Mr. Dow: If I may interrupt. What was Quigley's address?

The Witness: 129 Bloomfield Street, Hoboken, New Jersey.

Q. You say that Max Whitney is no longer in the employ of American Export Lines? A. No, he is no longer employed.

Q. Do you have his address? A. I have his address as No. 525 Center Street, Salt Lake City, Utah.

The Court: Is that the address that you have listed on your records?

The Witness: That is correct, sir.

The Court: Have those addresses been checked recently? Have any efforts been made to locate the men?

The Witness: Well, not by me.

Q. Is Richard Roos the radio operator in the employ of American Export Lines at the present time? [86] A. No, sir, he is no longer employed by them.

Q. Do you know his address? A. I have his address as No. 1459 Beardsley Street,—somehow or other they left out the name of the city, but I know that it is in Ohio.

Q. Akron, Ohio, I believe, it is from my records.

Is the junior engineer, Ernie H. Savola, still in the employ of Export? A. I have no record of him.

Q. Do you know whether or not Dimitri Filipachis, who was the oiler on watch, do you know whether or not he is still employed by Export? A. No, sir, he is no longer employed by us.

Q. And what is his address? A. No. 313 West 33rd Street, New York City.

Q. Do you know whether or not Frank Miranda, who was the fireman and water tender on watch at the time, do you know whether he is still in the employ of Export? A. He no longer is in our employ.

Q. Do you have his address? A. Yes, sir, his address that I have is No. 30 Catherine Slip, New York, N. Y.

Mr. Estabrook: I have no further questions.

[87] *Cross-examination by Mr. Dow:*

Q. Mr. Collins, did you send any telegrams, letters or have your agent look up the third mate in San Pedro, California? A. No, sir.

Q. It is possible they might be right here in New York City, as far as you know? A. Yes.

Q. The lookout Quigley, you say that he lives in Hoboken? A. Yes.

Q. Did you try to get him on the phone or go around to that address and see him? A. No, sir.

Q. You made no effort to locate him at all? A. No, I did not.

Q. The helmsman whose address is in Salt Lake City? A. Yes.

Q. What efforts did you make to locate him? A. None at all.

Q. And your radio operator in Akron, Ohio, what efforts did you make to locate him? A. None.

Q. This Dimitri Filippachis who lives on West 33rd Street, New York, did you make any effort to get a hold of him? A. No, sir.

Q. And Frank Miranda, who also lives in New York, did you make any effort to get in touch with him? [88] A. No.

Mr. Dow: If the Court pleases, a number of these men live either in New York—one in Hoboken—they live around here at any rate and presumably any of them could be here.

The Court: I don't know whether Mr. Estabrook plans to offer their depositions.

Mr. Estabrook: Your Honor, I put in my proof sufficient to offer the depositions that I wish to offer and I have put in my proof as to witnesses who were on watch at the time and who are no longer in our employ so that we cannot be accused of actually getting these witnesses out of the jurisdiction.

If Mr. Dow wishes to call these people as witnesses he of course may do so. He has had their addresses from the Coast Guard for four and a half years.

The Court: What do you say to that, Mr. Dow?

Mr. Dow: Your Honor, how was I to know, until today, that Mr. Estabrook did not plan to call these men, that he did not have them right here in New York.

The Court: Did he tell you he expected to call them?

Mr. Dow: No, sir, but under the rules as I [89] understand them if he is going to use the deposition of one of these witnesses he cannot do so if the man is within 100 miles of the jurisdiction of this Court.

Some of these men according to this witness live right here in the City. I have no doubt that I will be able to find a few of them but he cannot, under the circumstances, offer their testimony until he has shown that they are not here when the evidence points to the fact that in all probabilities, being their home, that they are right here.

The Court: Were the depositions taken at your office?

Mr. Dow: These are not depositions in our cases and——

Mr. Estabrook: May I interrupt?

Mr. Dow: Let us answer the Judge's question.

The Court: Is your testimony that you wish to offer extracts of testimony taken before the Coast Guard?

Mr. Estabrook: No, your Honor. One is a deposition taken by Mr. Dow of the witness Giffin, whose address is on the West Coast and who is no longer in our employ and it was admitted with the depositions on the first trial.

The Court: I see no objection to that deposition.

[90] Mr. Estabrook: The second deposition is that of the chief officer who is in Bombay and they are the two depositions that I intend to offer.

The Court: They are the only ones?

Mr. Estabrook: Yes, your Honor.

The Court: What do you say to that, Mr. Dow?

Mr. Dow: They happen to be the only two depositions that were taken. None of the other men listed here were ever called on the other trial.

I will tell you what I would be willing to do.

You have not called these men, Mr. Estabrook. You have not taken their depositions. Some live right here in the city. You wish to completely ignore them.

Will you permit me to substitute their sworn testimony before the Coast Guard?

Mr. Estabrook: No.

Mr. Dow: Why not? They were under oath. Do you want justice in this case or not?

The Court: Gentlemen, we do not have a jury here. I shall not hesitate to distinguish between evidence and colloquy between counsel.

By the way, do they observe the rules of evidence at these Coast Guard hearings?

Mr. Estabrook: No, your Honor, they are more or [91] less informal administrative hearings and pleadings are not filed and issues are not joined. Your right of cross-examination is limited. There are questions as to whether the witness is properly sworn and they are far more informal in their swearing—in other words, a witness need not take an oath and he will still be listed as having been duly sworn.

For the purpose of an administrative hearing a man may give a statement under oath or not and I do not wish to be bound by the testimony of these witnesses.

The Court: Do I understand also that you are restricted in your cross-examination at those hearings?

Mr. Estabrook: They are first examined by the Coast Guard and you are limited to that. We also have the question—I was not permitted to examine these witnesses fully—there was a great deal of pressure. Many of the witnesses were desirous of helping Rivera.

The Court: Mr. Dow's position seems to be that you have not called as witnesses those members of the crew of the Exmouth who could have been called by you and Mr. Dow did not know you did not intend to call them. Of course I do not think there is an obligation that he be told——

[92] Mr. Estabrook: We tried the case once, your Honor, and I did not call them.

The Court: I do not think that he is obliged to call these people, Mr. Dow. We have elaborate rules

where you could have gotten depositions. I do not see anything wrong or improper with Mr. Estabrook's failure to call them.

Mr. Dow: Your Honor, I should like to be heard on the strictness of the Coast Guard hearings.

The witnesses nevertheless were sworn. One, a Mormon refused to swear but he agreed to affirm but it is shown down here in this transcript (indicating) that he was sworn—actually he was not.

Unquestionably he was the most truthful man of the lot. The others were all sworn.

A Coast Guard examination or hearing is conducted by a board, a three-man board of whim I think two were lawyers and one a practical seaman. Then we were both given the right of cross-examination. We had far more liberality because the chairman of the board was the non-lawyer. We were given the utmost of latitude in cross-examination, we could not ask for more. We were not limited as to time and there was practically no objection made and almost nothing overruled.

[93] The men were under oath, all of them, immediately after the accident occurred which is now five years ago.

I therefore would be very happy to substitute the testimony of the missing men for the fact that they are not here. I also intend to offer the testimony of those whose depositions were subsequently taken and from the testimony before the Coast Guard, of those men, to contradict or impeach part of their testimony on deposition as distinguished from the testimony which they gave before the Coast Guard.

The Court: I am afraid I do not quite follow you; are you speaking of the two men whose depositions are to be offered by Mr. Estabrook?

Mr. Dow: Yes, sir. I have the right to impeach testimony by deposition with the Coast Guard testimony.

So far as the rest of them are concerned I am willing to accept what they said there. It was not until the hearing took place that I knew two of the men had been injured and I don't believe anybody knew the extent of their injuries at that time. According to the captain they were hardly injured at all.

I can submit the testimony of these others where Mr. Estabrook had as much right to cross-examine as I did, and if that is not acceptable I will look hard [94] to find them and then strenously renew my objection if I can. I went to great trouble to bring our own witnesses here. Certainly I would have been glad to go to Hoboken or to 33rd Street in this city.

The Court: When was the Master's deposition taken?

Mr. Dow: About two days after Judge Abruzzo called this calendar which was about the 14th of December.

The Court: Had it not been for the fact that a number of cases ahead of this case did not go to trial this matter would not be on at this time.

Mr. Dow: That is not what Judge Abruzzo said. He said if we can have the men here immediately after Christmas he would hear the case between Christmas and New Year's. The captain at that time was then coming into Algiers. I said to the Court, "That is fine. Then a radiogram from the Master stated that he had been in a storm west of Gibraltar

and that he would be three days late. He could not get here until about the middle of that week but the owners then told me—we are not going to take him off, we have just promoted the chief officer and he is too inexperienced and you will have to wait until they get to port, which was I [95] believe the 23rd. I was going to bring him here then and then it was close to Christmas and we told Judge Abruzzo that we would have him here some time on Tuesday.

The Court: Did all of the men whose names were called off to Mr. Collins, the last witness, testify before the Coast Guard?

Mr. Dow: Yes, sir.

By Mr. Estabrook:

Q. Do you recall who the purser was on this ship? A. No.

Q. Preston Williams, Jr., the purser, do you know anything about him? A. From my recollection he is not with the company any more.

Q. But you don't know for sure? A. I am quite positive. I do not have a record of him but I am positive of it nevertheless.

The Court: Mr. Dow, I will give you an opportunity to bring those men in tomorrow—those in the metropolitan area.

Mr. Dow: I would be happy to, your Honor, but I always believed that if I could not show that a witness lived beyond 100 miles I had to produce him. I felt I was obligated to do it, or if I could not at [96] least submit their testimony unless I showed he was 100 miles from the court.

The Court: You cannot submit a deposition of a witness who could be brought into court, but that

does not mean that Mr. Estabrook is obliged to call every one. I mean by that everyone who testified—those who testified before the Coast Guard.

Mr. Dow: Looking at it that way I think you are quite right, your Honor. Of course, I can ask the Court to draw its own conclusions from failure to call. I think there is a fair assumption that the testimony would be adverse to Mr. Estabrook's case if he did call them and I will ask the Court to draw such a conclusion if I cannot find them, but I would like the opportunity to try and locate them.

The Court: I will give you ample opportunity to bring them in tomorrow. Mr. Estabrook can proceed with his case and close it. I will nevertheless give you an opportunity to bring them in. It is your risk, of course.

Mr. Dow: I realize that, your Honor. I think the testimony before the Coast Guard is good enough for me. I wish it were good enough for Mr. Estabrook.

The Court: I think it has some limited use. It [97] is limited to such conditions you may want to make of it in the event their oral testimony is contradictory to anything they may have said at the Coast Guard hearings.

Mr. Dow: It can be used for impeachment purposes.

The Court: Now you have all those addresses of those in the metropolitan area. Let Mr. Estabrook proceed with his case and you can serve those men and get them here tomorrow.

Mr. Dow: The one I would like is Preston Williams, Jr., the assistant purser.

Colloquy

The Court: (To witness.) Do you have his address?

The Witness: I can get it.

Mr. Estabrook: Your Honor, the witnesses were not called before in the prior trial involving the same state of facts.

Mr. Williams testified before the Coast Guard and his address then was No. 386 Main Street, Paterson, New Jersey.

The Court: Very well.

Have you any further questions?

Mr. Estabrook: No, sir.

(Witness excused.)

[98] Mr. Estabrook: I now offer in evidence, your Honor, pursuant to the order of consolidation and in lieu of a deposition, the testimony of one Bernard G. Leimers, chief mate of the SS Exmount.

* * *

The Court: Received.

(Testimony referred to received and marked Respondent's Exhibit E in evidence.)

* * *

Mr. Estabrook: I next offer in evidence the deposition of one Bernard E. Giffin, third mate of the SS Exmount or former third officer.

The Court: And his last address was where?

Mr. Estabrook: San Pedro, California.

The Court: Received.

[99] (Deposition of Giffin referred to received and marked Respondent's Exhibit F in evidence.)

Mr. Estabrook: I next offer in evidence a transcript of the testimony of one Felix Mullner, boatswain's mate, second class, of the United States Coast Guard as taken in the Rivera case, pages 332 to 345, including cross-examination.

The Court: Received.

(Transcript of testimony of Mullner, referred to received and marked Respondent's Exhibit G.)

The Court: Do we have any charts of the area in question?

Mr. Estabrook: Yes, your Honor.

I offer for the Court's convenience a clean chart of the area, chart No. 1219 which has not been marked by anybody. This chart has been corrected to May 14, 1949. I requested it immediately after the collision.

The Court: Received. I shall be glad to have that.

(Coast & Geodetic Survey Chart No. 1219 referred to received and marked Respondent's Exhibit H in evidence.)

Mr. Estabrook: At this time, your Honor, in view of the statements made at the commencement of the case, [100] the American Export Lines, the respondent in one case and the libelant in the other, moves to amend, if necessary, its libel and answer in order to plead as a separate additional cause of action and a separate additional defense that the issues in this particular case already been tried in the case of Miguel Rivera, plaintiff, against the American Export Lines, Inc. and Hellenic Lines, Ltd. in the

United States District Court for the Southern District of New York, which case carries the number Civil No. 53-207 and by judgment dated May 7, 1952, a judgment of $95,110 was entered and is shown by the Clerk's records, it being a judgment of $90,000 against both defendants and maintenance and cure was awarded in the amount of $5,110 against the defendant American Export Lines alone.

The Court: Did that judgment go beyond their findings that both defendants were negligent?

Mr. Estabrook: No, your Honor.

I will offer in evidence the pleadings but first of all I thought I should move to amend my pleadings.

Then there was the question of surprise. After the judgment was entered each of us got up $45,000 to satisfy the $90,000 cause of action. Due to Rivera being impoverished we paid him the $5,110 immediately [101] for maintenance and cure. When the question of how the money was to be paid came up I discussed this question with Mr. Batchellor and another gentleman in Mr. Dow's office and they requested a formal stipulation that the money would be paid subject to final determination of the collision suit.

I refused to enter into that stipulation and I said that I had authority to contribute $45,000 toward the satisfaction of the judgment.

The Court: You wish to offer in evidence the pleadings?

Mr. Estabrook: Yes, sir.

The Court: Received.

(Pleadings referred to received and marked Respondent's Exhibit I in evidence.)

The Court: Did each of you feel that if he prevailed in this case being tried here that he would be entitled, as one of the measures of damages sustained by him to the amount he was obliged to contribute to the payment of the judgment?

Mr. Estabrook: I vigorously opposed that, your Honor.

Mr. Dow: I have the stipulation.

The Court: I am just asking.

* * *

[102] Mr. Estabrook: Your Honor, we now offer in evidence a certified copy of the Rivera complaint, as well as the American Export Lines answer and the answer of the Hellenic Lines, the Clerk's minutes, the judgment and the order modifying the judgment.

The Court: You have made that offer. I will now [103] hear from Mr. Dow.

* * *

The Court: If you wish to offer it right here on this trial all right.

Mr. Dow: I do, your Honor. I offer as a libelant's exhibit the stenographer's minutes before Judge Kaufman in re Miguel Rivera vs. American Export Lines and the Hellenic Lines.

The Court: Very well, I will take it.

(Transcript (in part) in re Miguel Rivera vs. American Export Lines, etc. referred to received and marked Libelant's Exhibit 4.)

* * *

[106] (Adjourned to Wednesday, January 5, 1955, at 10:30 o'clock A. M.)

Ragnar F. Eklund—For Respondent—Direct

[107] HELLENIC LINES, LTD., owner of SS HELLENIC BEACH,

vs.

SS EXMOUTH and American Export Lines, Inc.

AMERICAN EXPORT LINES, as owner of SS EXMOUTH,

vs.

SS HELLENIC BEACH and HELLENIC LINES, LTD.

Brooklyn, New York,
January 5, 1955.

Appearances:

(As heretofore noted.)

TRIAL CONTINUED

RAGNAR F. EKLUND, called as a witness on behalf of the Respondent, having been first duly sworn, testified as follows:

Direct Examination by Mr. Estabrook:

Q. Captain Eklund, you were master of the Steamer Exmouth on June 5, 1949, were you not? A. Yes.

Q. How old are you, Captain? A. 63.

Q. And where were you born? [108] A. In New Zealand.

Q. Are you an American citizen? A. Yes.

Q. And are you licensed master? A. I am.

Q. When did you first get your license? A. I think it was about 1923.

Q. How long have you sailed as a master? A. About 20 years.

Q. I show you a book and ask you if you recognize it (handing)? A. Yes, sir, that is the rough deck bridge log of the SS Exmouth.

The Court: Please keep your voice up so that I can hear you.

The Witness: Yes, sir.

Mr. Estabrook: I offer the log in evidence.

Mr. Dow: No objection.

(Bridge log of the SS Exmouth referred to received and marked Respondent's Exhibit J.)

Q. I show you this book, Captain, again and ask you if you recognize it? A. Yes, that is the bell book of the Exmouth.

Q. The bridge bell book or the engine-room bell book? A. That is the bridge bell book.

Mr. Estabrook: I offer it in evidence.

The Court: Received.

[109] (Bridge bell book of SS Exmouth referred to received and marked Respondent's Exhibit K.)

Q. Now, Captain, would you tell us by whom the bridge log book now marked Exhibit J is kept? A. That is kept by the officer on watch.

Q. As one of the official records of the vessel? A. Yes, sir.

Q. And Exhibit K, the bridge bell book, that is kept by whom? A. The officer that handles the telegraph.

Q. Is that part of the regular records of the ship? A. Yes, sir, it is.

Captain, you may refer to the log if necessary to refresh your recollection. A. All right.

Q. Did you sail from New York to Philadelphia some time in June, specifically some time on June 4, 1949? A. Yes, sir.

Q. What time did you sail? A. 1 o'clock P. M.

Q. By the way, sir, what sort of a ship is the Exmouth? A. It is a Victory ship.

Q. And how long is she? A. She is 439 feet long.

Q. And how wide was she? A. 63 feet.

Q. And can you tell us here horsepower? [110] A. 8,000 horsepower.

Q. What kind of an engine did she have? A. She had two steam turbines.

Q. And has she one propeller or two? A. One.

Q. How many holds does she have? A. She has five holds.

Q. And how many holds are forward of the bridge structure? A. Three.

Q. And I suppose two aft? A. Two aft.

Q. How much cargo did you have on this occasion, Captain? A. So far as I remember I think it was about 300-ton.

Q. What is the full cargo capacity of the ship? A. 7600-ton.

Q. Do you recall your draft when you left New York? A. I think it was about 8 foot 6 inches forward and 16 feet 2 inches aft.

Q. Did you proceed to Philadelphia on June 4th? A. Yes.

Q. How was the weather when you went down the coast? A. It was fair until we came a little north of Overfalls Lightship and then there was a fog and we anchored.

Q. What is the maximum speed of the Exmouth? A. 17 knots, may be 17½.

[111] Q. Where did you anchor? A. We anchored one mile southeast of Overfalls Lightship.

Q. What time did you anchor? A. 10:52 P. M. on June 4th.

Q. What did you do then? A. I went down—I had been on the bridge all the time when it was foggy.

Q. In good weather do you stay on the bridge? A. No, just in the case of coming into port or when it is foggy and so forth.

Q. When you went below after you anchored how long did you stay below? A. Until the morning of June 5th at 1:40 A. M.

Q. What happened at that time? A. The Officer on watch called me and told me that the fog was clearing up.

Q. What did you do? A. I went up on the bridge and I looked around.

Q. Did you give any orders while you were on the bridge? A. At 1:42 there was standby engines, and we started to heave anchor.

Q. When did you get your anchor up? A. At 1:51.

Q. And what orders were given to the engines? A. First, slow ahead, and then full ahead.

Q. And what speed is full ahead, as given at that time? [112] A. At that time it would be 10 knots, on maneuvering speed.

Q. And what do you mean by maneuvering speed? A. When you are maneuvering they standby and that means they answer the bell fairly quickly.

Q. But when you go from a maneuvering speed of 12 knots to a full speed of 17 knots, what is the signal? A. We go all the way, first full speed astern and then full ahead.

Q. Full astern and then full ahead? A. Yes, we telegraph down for ahead and we go all the way, first full astern and then full ahead.

Q. Do you do that after you get under way? A. No.

Q. In which direction were you heading when you were anchored? A. Well, we anchored against a flood tide.

Q. What was the weather? A. It was fair at that time.

Q. How far could you see? A. Oh, I would say about four or five miles.

Q. Was there any moon or was it dark? A. It was a dark night.

Q. What was the wind? A. The wind was south.

Q. And how strong? A. Oh, not very strong.

[113] Q. Which way was the tide running? A. The tide was running northwest.

Q. And do you know how strong it was? A. Not exactly, but I think it was about two or three knots.

Q. What did you steer? What course did you steer when you got under way, did you steer right or left? A. I had to turn left because there was a ship laying to the west of us and I could not turn right, so I turned left to get around this ship.

Q. And did you pass the lightship? A. I passed the lightship at 2 o'clock, a quarter of a mile off our starboard beam.

Q. And on what course were you at that time? A. 260 degrees.

Q. And you were about a quarter of a mile off—and you were about dead south of the lightship? A. That is right.

Q. What speed were you making at that time? A. Seven knots.

Q. Did you see lights or other indications of a vessel which afterwards turned out to be the Hellenic Beach? A. I saw quite a few lights up to the shore but it was impossible to know——

Q. Well, Captain, when did you notice those lights? [114] A. As soon as we swung around and headed up.

Q. This is before you got to the lightship or after? A. Just before I got to the lightship.

Q. Did you give any orders as you were passing the lightship? A. Yes, after I passed the lightship I called to the wheelsman to steer 311 and right after I called him—I jumped in the chart room for a few seconds.

Q. Where was the helmsman steering from? A. He was steering from the wheelhouse.

Q. What sort of a room is that? A. It is a room with a porthole in the front and the wheel and the telegraph is in there.

Q. Were the portholes open or closed? A. That I don't recall. They were closed I guess because we never have them open unless it is very hot weather.

Q. Are there doors in this wheelhouse? A. Oh yes.

Q. Were they opened or closed? A. They were open.

Q. And where do those doors lead? A. They lead out from the side of the wheelhouse to the starboard and port wings of the bridge.

Q. Can you walk from the starboard wing to the port wing without going through the wheelhouse? [115] A. No, sir.

Q. And where were you standing when you passed the lightship? A. I was standing by the wheel.

Q. When you told the helmsman to steer 311— A. No, first I told him to hold it on 311.

Q. You told the helmsman to hold it? A. Yes.

Q. Where were you at that time? A. I stepped into the wheelhouse at that time because I wanted to go in the chart room and check it.

Q. Where is the chart room? A. Just behind the wheelhouse.

Q. And did you go in the chart room? A. Yes.

Q. What did you do there? A. I glanced at the chart and I went out right away again—it only took a few seconds.

Q. And when you came out what did you do? A. Then when I came out I told—I see a vessel which turned out to be the Hellenic Beach—I saw the masthead light and the range light and the side light.

Q. Where was the vessel from you? A. I will say she was bearing 45 degrees on the starboard bow.

Q. And how far away? [116] A. About one mile off.

Q. What did you do? A. I told the helmsman hard left, hard left.

Q. What else did you go? A. Then I blowed two sharp whistles thinking that we might cross port to port and I told the helmsman hard left.

Then I looked and then I blew whistles to put my ship to port.

Q. Were you in international waters? A. International waters.

Q. Under the international rules, Captain, do you have the right of way or did the other ship have the right of way? A. The other ship did.

Q. What is the reason for that? What is the rule that would apply? A. If the other ship is on the starboard side the Exmouth had to keep out of the way, we were the burdened vessel.

Q. And if you went left would you keep out of her way; your left turn with the ships a mile apart would that take you out of the Hellenic Beach's way? A. Yes.

Q. Did you hear any signal from the Hellenic Beach? A. She answered the two-blast whistle.

[117] Q. With short blasts or long blasts? A. They were short blasts.

Q. Were they close together or far apart? A. They were both together.

Q. What happened on the Exmouth after you gave the order hard left?. A. The wheelman said you mean right, Captain, and the third mate, he run in and he said, "Hard right, hard right," but I did not want that, I wanted left.

Q. So what happened? A. What do you mean?

Q. What did you do then when the third mate said hard right? A. I told the helmsman hard left and then the wheelsman put it hard left.

Q. And in the meanwhile what was the Hellenic Beach doing? A. She was bearing down on us.

Q. Did her bearing change? A. First it started to the left.

Q. And how could you tell that, Captain? A. I could see by the range lights and the masthead lights and then she turned very fast to the right.

If she had kept her course we would have gone clear. She hit us at No. 4 hold.

Q. Well, where is that in relation to the ship? A. That is the after part.

[118] Q. How far from the stern? A. About 150 feet.

Q. And what was the angle between the ships? A. I would say about 110 degrees.

Q. That is she was a little bit abaft the beam? A. That is right.

Q. Now what happened to you in the collision, Captain? A. I was standing watching the ship and I was knocked down—the ship heeled over on us and I was knocked down and I fell hard on the deck.

Q. Then what did you do? A. After that I have a very hazy recollection—I had a concussion at that time.

Q. Captain, after the collision do you recall clearly what happened on the Exmouth? A. No, sir.

Q. Do you recall whether you turned over the command of the vessel to the chief mate? A. I don't think I did.

Q. Where did the Exmouth go after the collision? A. First she anchored and then she proceeded to New York.

Q. Who was in command when she went to New York? A. I was in command.

Q. When you got to New York what happened? [119] A. I went to the Marine Hospital on June 13th and the doctor there said——

Before that, Captain, what happened between the time you got to New York and the time you went to the Marine Hospital? A. I don't recall very well. I believe that I was home in bed.

Q. Do you recall testifying before the Coast Guard, Captain? A. Yes, I do.

Q. Was your memory good at that time? A. I have a hazy recollection that I went to testify somewhere, but what I said and so forth, that I do not recall.

Q. How long did you stay in the Marine Hospital. A. Until June 24th and then I was discharged with my condition and I was told to convalesce.

Q. Who was the helmsman, do you know? A. A man by the name of Whitney.

Q. And how long had he been on the ship? A. He came on board at New York. He had not been on board very long.

Mr. Estabrook: That is all.

Cross Examination by Mr. Dow:

Q. What are you doing now, Captain? [120] I am a night mate with the American Export Lines.

Q. Have you been to sea since the accident? A. No, I don't want to go to sea any more. I am a night mate with the company.

Q. You testified to what speed you made on leaving the anchorage? A. Yes.

Q. When you rang full speed what did you get? A. Seven knots.

Q. Did you have any means of checking that? A. No, we always, in maneuvering speed, had such a speed at that time.

Q. Do you remember that the second mate, Mr. Cassetti testified at the Coast Guard hearing?

Mr. Estabrook: I object to this, your Honor.

Q. That the speed was 15 to 16 knots?

Mr. Estabrook: I object to that question, your Honor.

The Court: Objection sustained.

Q. You were present, were you not, Captain—— A. No.

Q. You were not there when Mr. Cassetti testified? A. No, and it is impossible to make 15 or 16 knots under maneuvering speed.

* * *

[122] *By Mr. Dow*:

Q. Captain, you stated that you were on the bridge of your ship at all times during the fog? A. Yes.

Q. And at every change of course from New York to the anchorage, is that true? A. No, not on every change of course, because I went down for supper—I was not on the bridge at all times before the fog set in.

Q. You also stated on direct examination that the weather was fair and that you could see four or five miles, is that correct? A. Yes.

Q. Captain, as you swung around the lightship, after you got your anchor up, you were heading southeast at the time, I think you said? A. Yes.

Q. And southeast would give you a course of about 125

[123] A. Yes.

Q. And you swung left? A. Yes.

Q. Right through zero, down through 311 to 260 about, is that correct? A. Yes.

Q. If you stayed on 311 as you went through there wouldn't that have taken you to pilot station? A. If we had run over the lightship it would.

Q. Supposing you had kept her on 311 and just veered enough to one side or the other to miss the lightship—I see that you are smiling, Captain. A. Well, if you know anything about a ship you would not ask a question like that. At nighttime and with the tide setting me down strong you cannot go close to a lightship with a heavy ship like the Exmouth, you have to keep a certain distance off to be absolutely sure that you will clear the lightship.

Q. Do you mean to say that you could not steer 311 and haul off a little to port or starboard, just a tiny bit and, then go back on 311 and miss the lightsnip? A. Yes.

After we passed the lightship I was going to swing her up to 311, but then I saw the Hellenic Beach coming down.

Mr. Dow: I move that the answer be stricken out as not responsive.

[124] The Court: Strike it out.

Q. As you swung through 311— A. Yes.

Q. And if you had held that course—if you could have held that course it would have taken you right to the pilot boat, wouldn't it? A. Yes.

Q. And the lightship was in your way, between you and the pilot boat? A. Yes.

Q. Couldn't you have swerved just a little bit to the right or left, just a hundred yards, we will say and then have gone back on 311? A. No.

Q. Why? A. When we passed the lightship then we could have swung over but then we have the other ship coming down.

If I had swung to the right I would have swung right into her.

Mr. Dow: I move to strike out the answer.

The Witness: Then I don't know how to explain it.

Q. You were heading 125 degrees and you came up through zero and down to 311.

Now instead of going to 360 degrees you stayed right on 311 which took you right to the lightship. You may have had to go out, on either side of course, of the lightship and that would be on your way to the pilot boat.

[125] My question to you is was there any reason that you could not do that? A. I had to go to the left of the lightship.

Q. Why? A. Because of the ocean ships, they all go on this side.

Q. Captain, will you point out on the chart the Overfalls Light vessel?

The Court: Before you ask those questions will you help me locate these various things on this chart?

Mr. Dow: They are all marked, your Honor, and the captain can point them out to you.

The Witness: Here is the lightship (indicating).

The Court: All right, go ahead.

Q. Captain, will you mark on the chart where you were anchored, that is from the lightship?

The Court: Put an X at that point.

Mr. Dow: May I watch this, please, your Honor?

The Court: Certainly, come right up.

Q. For the guidance of the Court each one of these sections on the side of the chart, alternately black and white, are one nautical mile, are they not, Captain? A. Yes.

Q. You have marked an X on the chart approximately southeast of Overfalls Light Vessel where you were anchored, [126] is that correct? A. Yes.

Q. Now will you mark the letter A where the pilot boat was? A. Well, of course I cannot judge exactly where the pilot boat was.

The Court: I think you said the lightship was in the course of your vision between the place where you were anchored and the pilot boat, is that right?

The Witness: Yes.

The Court: So would you say this is the place where the pilot boat was (indicating)?

The Witness: Approximately.

The Court: Suppose we mark that with a P, for pilot?

The Witness: All right (marking).

Q. The course from where you were anchored to the pilot boat is approximately 311 degrees, isn't it, Captain?

The Court: Is that approximately correct?

The Witness: Approximately.

Q. Now, Captain, the little black figures on this chart show the depth of the water, do they not? A. Yes.

Q. And the buoys directly north of the light vessel, that bell buoy approximately a mile and a half north of the [127] lightship (indicating), that marks the southern end of the Shoals? A. Yes.

Q. And that is a deep water channel as well? A. Yes.

Q. You could have gone either to the right or left, around Overfalls Lightship, could you not? A. No.

Q. Will you tell the Court why you could not? A. Well, over here is the deep water channel for large vessels (indicating), and this channel (indicating) is for barges and towboats and so forth.

Q. What was your deep draft, Captain? A. 16 feet.

Q. And what is the smallest depth of water between the bell buoy on South Shoal and the lightship? A. There is 40 feet there.

Q. And you cannot take a sixteen-foot ship through 40 feet? A. Yes, but there are towboats with about three or four barges behind them sometimes that go through there and in a narrow channel like that, and in the fog, if some-

thing happens you are absolutely doing best to go on the other side of the lightship.

Q. Well, that channel is a mile and a half wide? A. Approximately.

[128] Q. As you turned around and passed up near that channel just south of Overfalls Lightship did you see any tugs and barges in these? A. This is five years ago and I don't remember now.

Q. If you had seen them a mile and a half ahead of you you would have known it, would you not—if they were there you would have seen them? A. But I cannot remember that now.

Q. But if they were there you would have seen them? A. Yes.

Q. But you don't remember seeing them? A. No, I don't remember whether they were there or not.

Q. Will you take a pencil, please, Captain, and mark on here where the Hellenic Beach was when you first saw her?

The Court: I will mark an A as to the point where the Exmouth was anchored (marking).

Q. Captain, will you mark on here the place, approximately of course, where the Hellenic Beach was when you first saw her? A. This is only approximate understand.

Q. I realize that. A. I will say about here (marking).

The Court: I will put an H indicating the place where the witness has stated the Hellenic Beach was when [129] he first saw her.

Q. Where were you when you first saw the Hellenic Beach? As I recall it, you were abeam of Overfalls Lightship, a quarter of a mile off on the starboard side? A. Yes.

Q. And what were you steaming at that time? A. 260 degrees.

Q. You say you did steer 260? A. Yes.

Q. Will you mark on the chart where you were at that time; that is, when you first saw the Hellenic Beach? A. I was just about here (indicating on chart).

The Court: I will mark that E-1.

Q. Now, Captain, what is the distance between the Hellenic Beach and your ship at the time that you first sighted the Hellenic Beach? A. One mile.

The Court: In other words, the distance between these two points (indicating) is one mile?

The Witness: That is only approximate.

Q. That is right. Now, Captain, at this time you say that you were steering 260? A. That is right.

Q. Will you now lay out a course between the point where you were when you were abeam the lightship and the [130] pilot vessel and connect the two of them. Here are pencils and a triangle (handing).

Lay out a course from where you were abeam of the lightship to the pilot boat—lay it right down on the chart. A. About like this (witness drawing).

Q. Captain, is there any reason you could not have steered that course, keeping in mind that the lightship is already abeam on this course or even abaft your beam so that the lightship is no longer between you and the pilot boat. A. When I passed the lightship I had to be certain to pass it safely, I had to pass it with enough distance so that we will clear—not 100 yards—it must be at least a quarter of a mile to be clear.

You cannot pass anything like that at 100 yards.

Q. You have passed ships in the harbor at 100 yards, and done it many times, haven't you? A. When there is no tide and it is daytime and you know exactly where you are going.

Q. Do you mean to tell this Court after all your years at sea you dare not pass a lightship less than a quarter of a mile away? A. it is not done, except in a channel, of course.

Q. Well, wasn't this in a channel? [131] A. It was in a channel one way, but here is the lightship and here is your channel and here is the Shoals (indicating).

Q. But you had passed a quarter of a mile off? A. Yes.

Q. And you are abaft abeam and you are clear of Overfalls after she was abeam, aren't you? A. No, you are clear of it to the south, but on that course you get too close to her over here (indicating).

Q. Could you have run another 30 seconds on that course? A. I could have run another minute.

Q. A quarter of a mile? A. Yes.

Q. You could have run one more minute and then steered 311? A. But then I saw the Hellenic Beach and that ship was coming down and if I had kept on there I would have gone right into her.

Q. But this other ship was a mile away? A. Yes.

Q. Do you mean that you could not turn your 8500-horsepower ship a few degrees in a whole mile? A. It has decreased then, it is not one mile, because the other ship has to be warned—don't take my word for it, ask expert advice. But I don't think anybody would tell you that you could steer clear of her.

Q. You also had another burden, did you not? [132] A. What do you mean?

Q. Well, you were the burdened vessel? A. Yes.

Q. Doesn't the rule say that you are to slow down if necessary? A. Yes.

Q. To avoid crossing ahead? A. Yes.

Q. And if necessary you are supposed to stop? A. Yes.

Q. And if necessary you are supposed to reverse? A. Yes.

Q. Now, you had all of those things to do while the ships were separated by a mile of water; right? A. No—yes——

Q. Well, just yes or no, Captain. I will not take advantage of you at all.

You did not do any of those things, did you? A. No.

Q. Well, that is all with respect to this chart.

Now, Captain, would I be right in saying that it is your opinion that most of your trouble that night came from the failure of the mate on watch and the helmsman to promptly obey your orders—would that be a fair statement? A. Yes, if he had swung left we would have gone clear of the other ship.

[133] Q. And both the third mate and the quartermaster argued about it? A. No.

Q. Well, they said something different than you said? A. Yes.

Q. They did not say "yes, sir," and do it? A. No. I believe they misunderstood, they thought I wanted to go 311 but if I swung left I would have cleared her and they believed I made a misstatement, but I did not have time to explain it to them. There was no argument.

Q. Just sort of a discussion?

The Court: Do I understand that one said hard right after you said hard left?

The Witness: The helmsman turned right. I wanted to go hard left, but when I saw the other

ship coming down I decided that I would go to the right; but if I swung left I would have gone clear of her.

The Court: So that is why you said what you did?

The Witness: That is why I said "hard left, hard right, hard left."

By Mr Dow:

Q. And this was something different? A. Yes.

Q. You believed that if they had followed your orders [134] promptly and right away you would have avoided a collision? A. Yes.

Q. But they did not? A. No.

Q. You believe then, Captain, that there was failure to obey orders promptly? A. What's that?

Q. You believe then that there was failure to obey orders promptly, that that was a material cause of the collision? A. I believe that it was a material cause but not all the cause because if the Hellenic Beach had kept her course we also would have gone clear.

Mr. Dow: Without taking the Court's time to find a particular page, Mr. Estabrook, as I remember your trial memorandum, you stated in court, and correct me if I am wrong, that it is your contention that the Hellenic Beach should have gone to the left and that she failed to do so.

You state at page 5 that the master of the Hellenic Beach testified that the vessels were one-quarter of a mile apart when he heard the two-blast whistle from the Exmouth.

I believe also, your Honor, he also claimed fault on the Hellenic Beach, that the earlier one-blast

signal [135] constituted statutory fault because when the vessels were half a mile apart—"but kept going right when the vessels were half a mile apart, there would have been no collision."

The Court: I think he also testified that the second one-blast signal followed just seconds after that and he then did turn to starboard.

Mr. Estabrook: On the second signal, yes. He blew the second signal, he did not comply with it, though until after he heard the Exmouth's two blasts.

By Mr. Dow:

Q. And that, Captain, you think also contributed to the collision? A. Right.

Q. You told us, sir, that you had a brain concussion. Isn't it true that at the first hearing before the Coast Guard—and you have read the record—that the only thing you complained of was an arm injury that prevented you from writing? A. I don't remember that.

Q. After the collision, Captain, did you go down and have a look at the damage? A. After I hit my head I have a very hazy recollection of anything that happened. I might have or I might not have [136] had. I don't know.

Q. Am I to understand then that that is going to be your reply to any question that I might ask you after that?

Mr. Estabrook: I object to that. He may remember some things and not others.

The Court: You proceed and ask your questions, Mr. Dow.

Q. Captain, we will see what you can remember.

Do you remember the pharmacist's mate who was also the assistant purser coming to you about 2:30, shortly after the accident and asking for morphine to give to the injured man? A. No, but the morphine was in the ship's safe and the pharmacist's mate had the combination.

That would show anyhow in the medical log.

Q. Do you recall shortly after 3, about 20 minutes after 3, that the man required more morphine? A. No.

Q. Do you recall the radio operator coming to you on more than one occasion and asking you to send a radio to the Coast Guard for the injured man? A. No. I have a hazy recollection that he came once and I called them then but I don't remember enough about it.

Q. Do you recall it was not until 3:38 in the morning [137] that a radiogram was finally sent? A. I don't know.

Q. Do you recall that radiogram was finally authorized by the chief officer? A. No, that is the first time I heard about that.

Q. You don't remember doing it yourself? A. No.

Q. Do you recall that it was 4:08, only minutes later, that the Coast Guard arrived? A. No.

Q. Do you remember their coming aboard and asking for the captain? A. No.

The Court: You may just as well expedite matters, Mr. Dow, by asking what if anything he does remember.

Q. Do you remember anything whatsoever, Captain—— A. Not clearly.

Q. Well, coming down a little later: Do you remember going to bed in the chief engineer's bunk and of being awakened there? A. No.

Q. Do you remember calling a meeting in your office at 6 o'clock the next morning to write up the logbook? A. No.

Q. You don't? A. No. The logbook had to be written up right after the accident.

Q. But you don't remember a meeting in your office the [138] next morning? A. No.

The Court: That was that very morning, wasn't it?

Mr. Dow: Yes, sir.

Q. Would it refresh your recollection to know that the second mate, the third mate, the assistant purser and I think the chief officer were all present in your room? A. We do not have an assistant purser.

Q. Well, he acted as a pharmacist's mate. It was Mr. Williams? A. Yes.

Q. Mr. Preston Williams? A. Yes.

Q. You would not know where he was today, would you, Captain? A. No.

Q. Would it help you or strike a spark of recollection if I told you that it was Mr. Williams who wrote the logbook? A. I don't believe that. The officer of the watch always writes the logbook.

Q. Do you remember telling the third mate—think now—do you remember telling the Third mate be sure to put down that I blew a danger signal—be sure to put that down—do you remember that? A. No.

Q. As a matter of fact, Captain, you did not blow one, did you? A. I did.

Q. Did anybody else hear it? [139] A. I suppose so. It would be easy to find out by reading in the logbook to see whose handwriting it is.

Q. Well, you will admit that we would also know if we had the officers here. A. Right.

Mr. Estabrook: Your Honor, I might state that that is covered in the deposition.

Q. Captain, do you remember the chief engineer reporting, shortly after 3 o'clock, that the vessel was ready for sea? A. Not clearly, no.

Q. Do you recall a little bit of it? A. I have a hazy recollection that somebody said that we were able to proceed up to New York.

Q. And this was a little after 3 o'clock in the morning? A. No.

Q. When did you actually leave? A. I don't know.

Q. It was the next afternoon, wasn't it (handing witness logbook)? A. No, this was at 1:48.

Q. It was about 12 hours after the collision, approximately? A. Approximately.

Q. And at 3 something in the morning you had been advised [140] that the ship was ready for sea, had you not? A. I don't know.

Q. Do you know any reason why you waited 12 hours? A. We had to find out from our company what they wanted us to do. We were bound for Philadelphia and they changed the orders to proceed to New York.

How can we get a message back by 3 o'clock in the morning to proceed to New York?

Q. The reason for your delay then of 12 hours as you see it was the fact that you were not told what to do? A. We were to be advised from our company.

> The Court: Before this witness leaves the stand I will ask him to draw a line indicating the course of the Hellenic Beach as he saw it, if he did, from his own ship.

Q. Captain, I show you Respondent's Exhibit J, the rough deck log, and I notice that there is a separate sheet of paper tacked on to that day's log, namely, June 5th,

which does not appear to have ever been done anywhere else in the logbook (handing).

Do you notice that (indicating)? A. Yes.

Q. On June 5th at the right-hand side of the page at the top I see 1:42 A. M., "standby engines, fog dispersed, [141] commencing heave anchor," and then "1:51, anchor away, full speed, various courses to pilot station," that is where you were going, isn't it? A. Yes.

Q. And it then reads, "2 o'clock, Overfalls Lightship abeam starboard side close by." A. Right.

Q. Now the log on that watch ends at this point, does it not, on this page (indicating)? A. Yes.

Q. When the next watch came on at 4 o'clock they started as follows: "4:08—Coast Guard launch alongside," right? A. Right.

Q. Can you give any explanation why the third mate, who was writing his log very carefully up until 2 o'clock did not continue to write the log in the usual way? A. He did but there was too much writing there and that is why this was attached. There would not have been any room in the logbook for the next watch.

Q. Well, he would not have known how much room he was going to use when he started, would he? A. Well, he can very well judge how much space and then it would take up the whole morning there (indicating).

Q. Captain, this supplemental sheet of paper that is [142] attached here, was that written as each event occurred or was it all written at one time? A. I presume that it was written right after the collision—I don't remember it.

Q. It looks as if it all had been written at once, does it not? A. Yes.

Q. It looks as if it was one continuous writing (indicating to Court)?

The Court: Yes.

A. Yes.

Ragnar F. Eklund—For Respondent—Cross

Q. The events covered on this supplemental page run from 2 o'clock until 4:08, do they not, when the Coast Guard removed the men—it has 2 o'clock here and 2:05 here (indicating)—as a matter of fact the 2 o'clock entry represents, in red pencil, the entry of the third mate when you were abeam of Overfalls lightship, does it not? A. Yes.

Q. And then continues on? A. That is right.

Q. Can you give any reason why more than two hours elapsed until the Coast Guard got there? A. No.

Q. You cannot understand that? A. I don't remember what happened after. I told you that [143] before.

Mr. Estabrook: I object to the question as to why the Coast Guard was two hours late.

Q. Can you give any reason you can think of now, after all these years, why the Coast Guard did not arrive until 2 hours after the collision? A. No.

Q. You were right off the lightship station? A. Yes.

Q. And whose handwriting is this, Captain, do you know? A. The third mate's you can see it is the same as here (indicating in log).

Q. For example, in the entry which is represented "2 o'clock" it is written differently than the 2 o'clock on the other page (indicating), do you notice that?

It says here "2" with an AM under it. That is not the same as here, is it (indicating)?

The Court: Mr. Dow, this witness certainly cannot qualify as a handwriting expert—unless he identifies the handwriting.

Mr. Dow: Your Honor, then I am afraid I shall have to call a handwriting expert, because it is so different.

The Witness: Over here he probably wrote in a hurry and here he took more time and did a better job [144] with it—that's the only thing I can say to explain it.

Mr. Dow: I think you are right that he wrote it.

The Witness: Oh, he wrote it all right.

The Court: Do you identify his handwriting?

The Witness: No, your Honor. It is the handwriting of the third mate.

The Court: Do you know the third mate's handwriting?

Mr. Estabrook: Your Honor thought that you were referring to the purser's.

The Witness: It is the handwriting of the third mate.

The Court: You know that to be his handwriting?

The Witness: Yes.

The Court: And you identify it?

The Witness: Yes, sir.

By Mr. Dow:

Q. Do you know this red writing on the extra sheet to be the third mate's handwriting (indicating)? A. No.

The Court: You don't remember whether he wrote it but you identify the handwriting as the handwriting of the third mate?

[145] The Witness: Yes. I compare it with this (indicating), and it is the same thing.

The Court: Suppose you had not seen this at all (indicating in logbook). Would you be able to say that that is the handwriting of the third mate?

The Witness: Yes, your Honor.

Q. Captain, I think you testified here that the Hellenic Beach was about a mile and a half away when you first saw her? A. A mile away.

Q. A mile? A. Yes.

Q. Do you recall your testimony before the Coast Guard, and I read to you from page 305 and quote:

"Q. You did not see the Hellenic Beach at that time"—this was—in order to make it clear I will read the question before and this question I might say is by the Chairman of the Board—no, it is by Mr. Dow, myself.

It reads as follows:

"Q. Captain, you pointed out to us another ship which was on your starboard side. At that time you were about a mile and a half southeast of the lightship and you have indicated that the other vessel was about two miles south southeast of the lightship.

How far was the Hellenic Beach from that other ship at the time you first saw her? [146] A. I could not say that because I judge from my ship and I cannot judge from other ships her distance off.

"Q. You did not see the Hellenic Beach at that time? A. I saw the Hellenic Beach when I started to swing around.

"Q. Where was she? A. She was at least three miles off. I did not see the Hellenic Beach. I would not say that. I saw two white lights.

"Q. Which later proved to be the Hellenic Beach? A. Yes.

"Q. And they were then three miles away? A. Yes, approximately, at that time.

"Q. So that the first time you saw the Hellenic Beach she was really about three miles away from you? A. Yes, somewhere around there—that is approximate."

Do you recall that testimony, Captain; do you recall being asked those questions and making those answers? A. Yes, but I suggest that you keep on reading a bit further on that.

I think I also stated I saw a white light but I did not know whether it was a ship or a shore light or what and then I saw the red side light and then I know it was a ship and that was a mile off.

Q. And now I will read the question that follows:

"Q. Did anybody else on your ship hear the two-blast [147] signal from the other ship? A. I presume everybody heard it.

"Q. (By Chairman) He asked you if you know, Captain. A. I don't know as anybody else heard it.

"Q. Did anybody report it to you? A. No.

"Q. Did the junior third mate hear it? A. I don't know.

"Q. Did the lookout hear it? A. I don't know."

The Court: I suppose for the record you were asking this witness whether those questions were asked of him and whether or not he made the answers which you have read.

Mr. Dow: Yes, your Honor.

Q. Were you asked those questions, Captain, at the Coast Guard hearing? A. Yes.

Q. And those were the answers you gave? A. Yes.

Q. And that was when you were in good health, wasn't it? A. I don't know what time it was.

The Court: That was during your testimony at the Coast Guard hearing. You were in good health then?

The Witness: Yes, your Honor, but there were two hearings.

[148] The Court: Was your health all right at both hearings?

The Witness: No, not at the first one.

Mr. Estabrook: This was the second hearing, your Honor.

The Court: Was your health good then?

The Witness: Yes.

Q. That was on July 12, 1949, wasn't it, Captain? A. I don't remember.

Q. On page 283 of the transcript of the Coast Guard hearings were you asked the following question by the Chairman, and I shall read it to you:

"Q. You are now fully recovered and able to tell the story as you see fit? A. That is right."

Now, Captain, you testified first on June 6th, did you not? A. Yes, that is the time, if you say so, I don't remember.

The Court: Was that the first Coast Guard hearing that you are speaking of now?

Mr. Estabrook: Yes, your Honor, that was June 6th.

Q. When did you enter the hospital, Captain? A. June 13th.

Q. So it was a week after your testimony that you went [149] over to the Marine Hospital? A. That is right.

Q. Now, would you like to take the dividers and a pair of parallels and mark on the chart which his Honor has the course that you believe the Hellenic Beach was steering at the time that you had the Overfalls Lightship abeam?

The Court: That is, if he recalls.

(To witness.) You were abeam the lightship at the time you observed the Hellenic Beach?

The Witness: Yes.

The Court: Now what course was the Hellenic Beach running at that time?

The Witness: Well, this is approximate (indicating and drawing). We had come down this way (indicating on chart).

Q. You were headed to the pilot boat? A. I was headed up this way.

Q. I mean your destination was the pilot boat? A. That is right.

Mr. Dow: That is all.

The Court: Have you any further questions, Mr. Estabrook?

Mr. Estabrook: A few, I believe, your Honor.

[150] *Redirect Examination by Mr. Estabrook:*

Q. Captain, there has been some question about your not passing the lightship on your port hand instead of on your starboard hand.

Are you familiar with the Delaware River, Captain? A. Yes, sir.

Q. How many times have you been in there? A. Oh, I don't know, but hundreds I guess.

Q. And is there a custom as to the proper side that you should pass the Overfalls Light Vessel?

Mr. Dow: If he knows.

Q. Is there a custom as to the proper side to pass the Overfalls Light Vessel? A. Yes.

Q. And on what side? A. To the left of the lightship.

Q. The Hellenic Beach log gives the draft of the Hellenic Beach on leaving Philadelphia at 17-foot 7 inches forward and 20 feet 1 inch aft.

Would it be proper in your opinion, Captain, for the Hellenic Beach to have passed to the east of the lightship? A. No.

Mr. Estabrook: I have no further questions.

The Court: Anything else?

Mr. Estabrook: I am sorry, your Honor, I have [151] one or two more I would like to ask the captain.

The Court: Certainly.

By Mr. Estabrook:

Q. If you stood close to the lightship, Captain: 1, is the danger of fouling mooring chains greater, if you get too close? A. Yes, sir.

Q. Mr. Dow talked about passing vessels close aboard in New York Harbor—— A. Yes.

Q. Is it proper to pass a vessel close aboard while doing 12 knots, in a Victory ship? A. No.

Q. Why not? A. At 12 knots your Victory is not on maneuvering speed at that time because I have been captain of Victory ships—I beg your pardon, strike that out.

Q. My question was, is it proper to pass a vessel say within 300 feet, at 12 knots? A. No.

Q. Why? A. Well, first they make a swell and then the tide is deceptive and on a dark night you cannot judge 300 feet with a 12,000-ton vessel. You have a quarter of a mile, which is as close as you can go.

Q. If you are going up a narrow channel and you have to close to another ship, do you not customarily slow down before you get there? [152] A. Oh, yes, we do.

Mr. Estabrook: No further questions.

Recross Examination by Mr. Dove:

Q. Captain, will you read the entries in your logbook for 2 A. M. A. It reads, "Overfalls Light Vessel on starboard side—close." No, that is wrong.

The Court: Read it again, please.

The Witness: "2 A. M., Overfalls Light Vessel abeam, starboard side, close by."

Q. Anything more? A. No. Can I say something?

The Court: Would it be in answer to a question?

The Witness: Close by we call a quarter of a mile or so.

By Mr. Estabrook:

Q. Were you sober at the time of the collision? A. Of course, naturally.

Q. Did you have a drink? A. I had a bottle of beer at New York just before we left.

Q. The day before? A. Yes.

Mr. Estabrook: That is all.

By Mr. Dove:

Q. You had been taking some alcohol refreshment just [153] prior to the collision, had you not? A. No.

Q. When was the last time you had a drink?

The Court: Prior to the collision.

The Witness: When we left New York I had a bottle of beer.

Q. You drank after you left New York, didn't you, Captain? A. Just at the pier, before we left.

Q. Do you mean to say that you never had a drink from the time the ship sailed until the time of the collision? A. That is right.

Q. Did you have any liquor after the collision, until you got back to New York? A. I don't know, I don't remember.

Mr. Dow: That is all.

(Witness excused.)

Mr. Estabrook: Your Honor, I subpoenaed the medical records from Hudson and Jay Streets, and I would like to mark them as an exhibit and read a narrative summary into the record.

* * *

[157] (Adjourned to Thursday, January 6, 1954, at 10:30 o'clock A. M.)

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[158] Brooklyn, New York,

January 6, 1955.

Appearances:

(As heretofore noted.)

TRIAL CONTINUED

BERNARD E. GIFFIN, called as a witness on behalf of the Libelant, having been first duly sworn, testified as follows:

Direct Examination by Mr. Dow:

Q. Where do you live, Mr. Giffin? A. At No. 435 West 23rd Street.

Q. New York City? A. New York City.

Q. And you are appearing here under subpoena, are you? A. I am.

Q. Were you the former third officer of the SS Exmouth on or about June 5, 1949? A. I was.

Q. Do you recall sailing from New York shortly prior to that day? A. I do.

[159] Q. How long had you been on the ship at that time? A. I would say approximately ten months.

Q. And had you had the same captain on all that time? A. I did.

Q. Prior to the departure from New York had you held a different position on the ship than you then held? A. That is correct.

Q. And what was that position? A. I was junior third mate.

Q. What watch did you stand as third mate? A. The 12 to 4 watch.

Q. That watch starts at 4 A. M. and at 4 P. M.? A. That is right.

Q. Do you remember approximately when you sailed from New York? A. It was about one in the afternoon of the previous day.

Q. You have read over your testimony before the Coast Guard, have you not? A. I have.

Q. And when did you read that over? A. Last night.

Q. When was the first time that my office got in touch with you? A. Yesterday afternoon.

Q. Have you discussed this case with me this morning? A. I have.

[160] Q. And that is the first time we had met? A. That is correct.

Q. Since the Coast Guard hearings? A. Since the hearings, yes, sir.

Q. After your departure from New York did you have occasion to observe the manner, demeanor and physical condition of the captain on your watches? A. I don't recall any particular opportunity—I was in my cabin most of the time.

Q. No. My question is when you were on watch. A. Oh, when I was on watch, yes, that night, that evening.

Q. And what was his condition? A. He gave the appearance of having been drinking.

Q. In the previous ten months that you had been on board the ship had you previously observed the captain's condition? A. Yes.

Q. A few times or many times? A. A few times.

Q. That is while you were at sea? A. Both at sea and in port.

Q. On your way down from New York you had a new junior third mate, did you not? A. That is right.

Q. Did you hear the captain give any orders to the [161] junior third mate on the way down from New York? A. No.

Q. Or talk to him at all? A. No.

Q. When you were anchored off Overfalls Lightship that evening, did you hear any such conversation? A. No, I heard no conversation between them.

Q. Did you anchor off Overfalls Lightship that evening? A. Yes.

Q. And that was the evening you say that you noticed his condition, is that correct? A. Well, I did not notice his condition until I came up to the bridge. They called me up to the bridge.

Q. What time was that? A. That was approximately half past 1 in the morning.

Q. And that is when you say he had been drinking. A. Well, he gave the appearance of having been drinking.

Q. Would it help you if I showed you the logbook to refresh your recollection as to the time?

Mr. Estabrook: I object to that question, your Honor. I also move to strike out the questions and the answers from the record about the master having given the appearance of having been drinking.

The Court: Strike out the answer that the master gave the appearance of having been drinking.

[162] Q. In your opinion was the master drunk at that time, when you were called? A. In my opinion, yes.

Q. Now I show you the logbook and the bell book of your ship which may help refresh your recollection—I know that it was a long time ago (handing).

Will you tell the Court approximately where you found yourself at anchor when you came on watch at midnight, the morning of June 5th?

The Court: Is your question where he found himself at anchor?

Mr. Dow: They had already anchored, your Honor, while he was on his watch below.

The Witness: There is no entry here.

Q. Do you recall of your own recollection approximately where you found yourself anchored in relation to Overfalls Lightship, and please speak up, Mr. Giffin, so that we can all hear you. A. As I recall it Overfalls bore 291 degrees with an approximate distance of one mile—that is, from my recollection.

Q. That would put you about a mile southeast of the lightship? A. Southeast, yes, that is right.

[163] Q. What time did you leave the anchorage? A. 1:51 A. M.

Q. And what signal on the telegraph was given to the engine-room at that time? A. Full speed ahead.

Q. Do you remember what the tide was at that time? A. As I recall it it was a flood tide.

Q. And that would account for your heading while you lay at anchor, is that correct? A. Yes, sir.

Q. And that was approximately what? A. Southeast.

Q. When you left the anchorage did you go left or right? A. We went hard left.

Q. And consequently your headings swung through east and then north and then down toward the west, is that correct? A. Toward the west, yes.

Q. At one time during that swing were you heading 311 or 317 or something like that? A. Yes.

Q. You would have to, wouldn't you? A. Yes.

Q. In making that swing? A. Yes.

Q. And what heading did you eventually steady on—just approximately, if you can tell us?

[164] The Court: Is there any log entry on that?

The Witness: No, your Honor.

The Court: Do you have a recollection?

The Witness: Either 275 or 285 or 290—I am sure that it was 290.

Q. After you got under way at 1:51 and went full ahead under a hard left rudder, did you observe the light of a downbound ship? A. As we steadied on the course.

Q. Shortly thereafter did you see any other ship coming down from the pilot station? A. I don't understand you—after we anchored?

Q. No, sir, after you heaved up the anchor, went full ahead and started to swing around did you shortly there-

after or at any time thereafter observe the light of a ship coming down from the direction of the pilot station? A. Shortly thereafter, yes.

Q. Mr. Giffin, approximately how far off would you estimate or did you estimate the lights of this other ship to be when you first saw her? A. I believe I said three or four miles.

Q. When you say "you said," you mean at the time of the Coast Guard hearings? A. Yes. That is my estimate.

[165] Q. And what lights did you see? A. The masthead, the range, and the red port side light.

Q. After you passed the lightship, you passed it close by, I believe? A. About a quarter of a mile.

Q. At that time approximately what do you think your heading was, if you can remember? A. Approximately 285.

Q. And how far away was the other ship at that time—would you give an estimate on that? A. A mile, possibly two.

Q. It is difficult to judge distances of lights at night at sea? A. It is.

Q. What speed were you making at that time, in your opinion; you having been on the ship for ten months I think you said? A. I would judge the speed to be 15½ to 16 knots.

Q. And what do you base that on? A. Revolutions and the tide.

Q. So that was your speed over the bottom? A. Considering the length of time that it took us to get under way.

Q. Approximately how was the other ship's bearing in relation to your bearing? In other words, was she crossing [166] your course at right angles, or what would you say? A. Is this before we made the turn?

Q. After you passed the lightship? A. Not quite at right angles on the starboard bow.

Q. And about how many points from the starboard bow? A. Four.

Q. In other words, she was in about 45 degrees? A. About 45 degrees forward of abeam.

Q. So she was about 45 degrees or a little less on your starboard bow? A. Approximately.

Q. Did you call the captain's attention to that light or to that ship? A. I did.

Q. When was the first time that you called his attention to it in relation to the distance away and where you were? A. I do not truthfully remember that at this time.

Q. Was it before you completed your swing or after you passed the lightship? A. It was after we completed our swing but before we got to the lightship.

Q. So you were heading approximately, would you say, northwest at that time? A. Approximately.

Q. And you thereafter continued to swing more westerly? [167] A. No. I am afraid you have me confused.

Q. I am sorry. I will strike out my question. A. The swing you are speaking of is the swing from the anchorage?

Q. That is right. A. Then we settled on a course.

Q. That is right. A. We were steady on the course at that time.

Q. But you had not passed the lightship yet? A. No, sir.

Q. When you called the ship, that is the other vessel, that was the one that proved to be the Hellenic Beach; is that right? A. Yes.

Q. The one with which you eventually collided? A. Yes.

Q. When you called the captain's attention to that other vessel what did you say to him and what did he say to you? A. I called his attention to the pilot vessel first off.

Q. You could see the pilot vessel? A. At that time, yes.

Q. And what was his bearing at that time? A. Well, it was approximately the same.

From all indications the other ship had just left the pilot station and at the same time I called [168] the captain's attention to the vessel coming down showing his red light.

Q. What did that red light mean to you? A. That the pilot was heading——

Q. No. What does a red light mean to you in reference to the rules of the road? A. Oh, to give him way.

The Court: I did not hear that.

The Witness: We should give him way.

The Court: In other words, he was the privileged vessel and you were the burdened vessel?

The Witness: That is right.

Q. Under those circumstances what do you understand to be the rules which cover your conduct? A. To give way, to stop engines or to reverse.

Q. Did you do any of those things, either then or later—did you do any of those things before the collision? A. After having the lightship abeam we were maneuvering.

Q. What do you mean by that? A. Making our left turn.

Q. And by give way you mean going to the right, don't you? A. Well, not always.

Q. What did you do to avoid the collision? A. I believe the order was given to change course from our [169] swing to the left.

Q. Did that avoid the collision? A. No.

Q. Then what did you do to avoid the collision? Did you stop, did you reverse—— A. No.

Q. Did you slow down? A. No.

Q. Did you go to the right, did you go under her stern? A. No.

Q. Did you try to? A. He did try to go right, that is after stopping our swing to the left.

Q. Do you mean that she would not answer her helm, you put her over and she would not answer? A. As I recall it she started to swing but by that time it was too late.

Q. You mean you were then in the jaws of collision? A. In so many words, yes.

* * *

Q. Did the captain give an order after leaving the light ship that was designed to avoid collision?

Mr. Estabrook: I object to that question.

[170] Q. In your opinion?

The Court: What is your objection to that question, Mr. Estabrook? I think the form is bad, Mr. Dow.

Q. What orders did the captain give after you passed the lightship? A. He came left to 317.

Q. What were you steering then? A. 285.

Q. Well isn't 311 to the right of 285? A. It is.

Q. Did you do or say anything when you heard that order? A. First the helmsman said to the captain, "You mean right, Captain." Immediately I said, "Yes, that's right, you will have to come to the right."

Q. What did the captain say? A. He said "hard left."

Q. What did the helmsman do, if you remember? A. He put the helm to the left, obeying orders.

Q. How far away were you then from the other ship? A. A half a mile.

Q. In your opinion, and you were the mate on watch, if you had gone hard right what would have happened at that time? A. We would have swung clear and come on our course to the [171] pilot boat.

Q. And there would have been no collision? A. Ordinarily, no.

Q. In your opinion would there have been any? A. In my opinion, no.

Q. If you had gone hard right at that time? A. In my opinion, no.

Q. This is a long time ago, Mr. Giffin, I know that, but can you tell us the discussion that ensued in the wheelhouse? In other words, did that end it or was anyone sent to the chart room to check the course? Tell us what happened after that. A. Well, to begin with the helmsman said you mean "right, Captain," and I said, "Yes, right." The captain then said, "Hard left."

I said, "Captain, we have to come right to come to the 317 course to get to the pilot station."

He said, "Go into the wheelhouse and make sure."

I dashed into the wheelhouse—I knew that we had to come right, but at any rate I dashed right out again and I said, "That is right, Captain, we have to come right."

By this time we were swinging to the left. Then he said, "All right, come right, come hard right," he said that to the helmsman. That was it.

[172] Q. Did the helmsman come hard right? A. I did not see him.

Q. How quickly after that did the collision occur? A. Very shortly after that.

Q. Do you mean seconds? A. Oh, a minute or two

Q. Did the ship respond to its helm before the collision? A. As I looked out the port hole she seemed to be swinging to the right.

Q. Your ship? A. Our ship.

Q. How far away was the other vessel then? A. Oh, the other vessel was very close.

Q. Could you estimate it for us? A. 50 yards, perhaps less.

Q. Then the collision was about to occur? A. That is right.

Q. Did your ship blow any whistles prior to the collision? A. Immediately prior to the collision I recall hearing two blasts.

Q. Who blew those? A. The master.

Q. And then it was immediate after that that he gave the hard right order? A. No, the hard right order was given before the two-blast whistle.

[173] Q. So the order hard right was given and then there were two blasts blown? A. After the other ship had blown several short blasts.

Q An alarm? Did you hear any other signals during this interval preceding the collision from the Hellenic Beach, other than her alarm? A. No.

Q. Part of the time or at least for a moment or so you were in the chart room; is that right? A. For a few number of seconds I was, yes.

Q. And you could not hear very well in there, could you—at least not as well as you can hear out on the bridge? A. No.

Q. Were you excited at that time? A. I would imagine so, yes, sir.

Q. Was this light or this ship coming down reported by the lookout on the bow? A. Yes, several times.

Q. More than once? A. Oh, yes.

Q. And how did they report it, by voice or by telephone? A. By telephone.

Q. Who answered the telephone? A. I did.

Q. And who was on the other end? A. Two or three times it was the lookout man and once or twice it was the chief officer.

[174] Q. They were both up there then? A. They were.

Q. So that there were at least four or five occasions when you received this report from the men on the bow? A. Four or five, yes, sir.

Q. Were they getting excited?

Mr. Estabrook: I object to the form of that question, your Honor.

The Court: Objection sustained.

Q. Did they seem to show concern or were they casual and nonchalant about it?

Mr. Estabrook: I object to that question. He can have the witness describe the tone of voice perhaps.

The Court: You will have to select other words, Mr. Dow.

Q. Will you describe to u —you say they reported this ship four or five times? A. That is right.

Q. Ordinarily how many times do you report? A. Once is enough.

Q. So this was unusual to report four or five times? A. That is right.

Q. Did you like the idea of them continuing to call the [175] bridge? A. Yes.

Q. Why?

Mr. Estabrook: I object to that, your Honor.

The Court: Objection sustained. The question was did you like the idea. I sustain the objection.

Q. Each time that they called the bridge did you do anything about it? A. Yes.

Q. What did you do? A. I notified the captain.

Q. Didn't he hear you the first time? A. Yes.

Q. Did he hear you the second time? A. Yes.

Q. Did he hear you the third time or the fourth time or the fifth time, if there was a fifth time? A. He heard me every time.

Q. What did he say? A. All right, all right.

Q. Do you think he understood you?

Mr. Estabrook: Objected to.

The Court: Sustained.

Q. Did the captain see the other ship, do you know?

Mr. Estabrook: I object to that question.

The Court: If he knows. Did he tell you he saw it?

The Witness: His only words were—no, he did not say anything about that at all—his only words [17] were all right, all right.

Q. Did you change your telegraph at all, that is the speed? A. Do you mean prior to the collision?

Q. That is right. A. No, sir.

Q. Did you suggest to the master that there be a change in speed? A. I don't think so.

Q. When the collision was but a few seconds away did you give any thought to ringing the general alarm—when you saw the collision was imminent? A. No. My main concern was trying to avoid the collision.

Q. And you were not able to do anything about it; is that it? A. I was not.

Q. You simply continued to talk with the captain, is that right? A. Yes. I said, "Captain, we are going to hit."

Q. What did he say? A. There was nothing to be said, we just hit.

Q. When you struck, or when you were struck did the other ship cut and stick into your side, or did she just bounce along aft? A. She passed into the side and then bounced along aft, off the stern.

Q. What happened to the captain when the collision occurred? [177] A. He was thrown off his feet.

Q. What did you do immediately after the collision? A. I put the telegraph on stop engines. I ran out to pick up the captain and put him on his feet.

Q. Did you ring the alarm? A. Only after suggesting it to the captain.

Q. When you picked the captain up and put him on his feet did he say anything to you at that time? A. His words were, "I did not see him, I did not see him."

Q. What did you do then? A. I then suggested that we ring the alarm and order the crew to the boats because we were listing quite rapidly. In a matter of minutes we were listing 15 degrees.

Q. To starboard? A. To starboard. He agreed and he muttered the correct statement "standby."

Q. Did he complain to you at that time that he had been injured? A. No.

Q. He did not say anything about it? A. No.

Q. Going ahead for a moment, did he say anything about being injured at any time, the rest of that night, the following morning or until after you eventually got to New York, did he ever complain about being injured? A. I don't recall anything like that.

Q. Did you see any injuries on him? [178] A. No.

Q. Where did you go and what did you do after you rang the general alarm? A. Again I suggested that I go down to the boat station to help get things in order, which I did.

Q. At no time did you attempt to take command of the ship away from the captain; is that right? A. That is right.

Q. Even though he was drunk in your opinion?

Mr. Estabrook: I object to that question, your Honor.

The Court: Sustained.

Q. Even though his condition was as you stated it to be before? A. Yes, sir.

Q. Where did you go then? A. Do you mean after going to the boat station?

Q. Yes, or what did you do while you were there? A. I helped prepare the boats.

Q. Did you swing them out? A. I think two were swung out or lowered into the water in the confusion. And that was while I was taking the strongbacks off one of them.

Q. The strongbacks are the wooden framework pieces over the boats that support the canvas covers? [179] A. Yes. Someone had lowered two boats into the water. We hoisted them aboard a few minutes later when the chief engineer came from the engine-room to assure us that everything was all right, that there was no immediate danger.

Q. Did he tell you that the ship was ready to move? A. Not then he did not, no.

Q. Did he later? A. Yes.

Q. How much later? A. Between a half an hour and an hour later. I don't remember exactly.

Q. At this time when you put the boats over, you were drifting? A. Yes.

Q. You had not anchored yet? A. No.

Q. The master had given no order to anchor? A. No.

Q. When you got the boats over what did you do? A. We put them aboard again a few minutes later and I returned to the bridge.

Q. And who did you find there? A. To the best of my recollection there was the chief officer, possibly the chief engineer and the master and the helmsman.

Q. Was anything said in your presence while you were there and if so what did you say and what did they say?

Mr. Estabrook: I object to that question, your Honor, a conversation a half hour after the collision [180] I do not think is material.

The Court: I will take it.

The Witness: I do not recall having said anything. The chief mate I believe suggested anchoring and the idea was immediately carried out.

Q. The master agreed to that, did he? A. Yes.

Q. And that was the chief mate's idea? A. To the best of my knowledge, but I do not remember exactly.

Q. You were still on watch, were you not? A. Yes.

Q. Until 4 o'clock? A. That is right.

Q. Was anyone injured or did you know at that time of any injuries which occurred as a result of the collision? A. At the time that I went back to the bridge. I heard the report, yes.

Q. But you don't remember who told you? A. No.

Q. But you heard there had been someone injured? A. Yes.

Q. Do you remember how many men? A. Yes.

Q. How many? A. Two.

Q. Now you have a man who looks after injured people aboard the ship, the pharmacist's mate? [181] A. The purser.

Q. Well, on this ship was he a combination purser and pharmacist's mate? A. That is true.

Q. Did you see him? A. I must have. I don't remember but I must have.

Q. Did you see the radio operator? A. Shortly thereafter, yes.

Q. What did you say to him and what did he say to you, if you can now remember the conversation? A. His conversation was mostly with the chief officer, about sending wires to the company and to the Coast Guard. I had nothing to do with that.

Q. Do you know whether a wire was sent off to the Coast Guard, immediately after the accident? A. I believe so.

Q. Immediately after the accident? A. I just don't remember.

Mr. Dow: I call now for the production of the radio log, Mr. Estabrook.

Q. Do you remember when the Coast Guard came alongside? A. By referring to the logbook.

Q. But you have no independent recollection of the time? A. No, no specific time.

Q. What time did the Coast Guard arrive alongside? A. At 4:08, after I had been relieved.

[182] Mr. Dow: May I have the copies of the messages sent and received after 2:05 A. M. on June 5th. The log simply shows Msg., meaning message but does not tell who to or what.

Mr. Estabrook: I produce the copies of the messages herewith (handing to counsel).

Q. The 7:40 G. M. T., that is Greenwich Mean Time, that would be what time aboard your ship at this time? You were on daylight saving, were you not? A. We were. There would be four hours difference.

Q. So that would be 3:40 A. M.? A. Right.

* * *

Mr. Dow: The message reads as follows:

"Exmouth to U. S. Coast Guard: Request Coast Guard aboard SS Exmouth in collision off Cape May: Two men injured.
Signed Master."

The time is 7:40 G. M. T., which the witness says is 3:40 A. M., ship's time.

Q. Have you any knowledge, that is personal knowledge of your own that you can recall as to why there was a lapse [183] of 1 hour and 35 minutes from the time of the collision until the time the Coast Guard was called to remove the injured men, keeping in mind that you were the officer on watch at the time? A. There was some difficulty locating the master to authorize the sending of the message.

Mr. Estabrook: I move that that answer be stricken out. If the witness does not know of his own knowledge.

The Court: I will deny your motion. I assume that it was of his own knowledge.

Q. Did you try to find the master, Mr. Giffin? A. I personally did not.

Q. Did you send anyone to try and find the master?

Mr. Estabrook: I renew my motion, your Honor. The witness has said that he did not try to find the master.

The Court: We have had an intervening question and answer.

Did you personally try to find the master?

The Witness: The radio officer attempted to find the master and also the second mate.

Mr. Estabrook: I object.

The Court: Objection sustained. Strike out the [184] answer.

Q. Where were you stationed during this time? A. I was still on the bridge.

Q. Was the master on the bridge? A. At this time?

Q. Yes. A. No.

Q. Did you telephone to his room? A. I did.

Q. Did you receive any reply? A. No.

Q. What else did you do to try to locate him? A. I sent one of his men, one of the seamen, I knew that the radio officer and the chief officer were making an attempt to find him to get authority to send a message.

Q. Did this man come back and report to you? A. He did.

Q. What did he say? A. That he could not find the master.

Q. Did you ever see the master from the time you went back up on the bridge, after leaving the boat deck, until the end of your watch? A. Yes, as I say he was there at the time that I returned to the bridge.

Q. And about what time was that? A. A quarter to 3 or 3 o'clock, that of course is approximately.

Q. From that time until you went off watch did you see [185] the master again? A. No.

Q. Did you meet the radio operator while you were on watch—did he come to you? A. I met him.

Q. Did he come to you or did you go to him? A. He came to the bridge.

Q. What did you say to him and what did he say to you? A. He asked about sending messages, the chief officer was on the bridge at the time and he was hunting for him too.

Q. Hunting for the master? A. Yes, both the radio officer and the chief officer.

Q. Did the radio officer, when he came on the bridge, speak to you as the officer of the watch? A. He probably did.

By that time I felt that the chief officer was in command and I let the conversation pass between the two.

Q. Did the chief officer at that time authorize the sending of a message to the Coast Guard? A. I believe so but I don't recall.

Q. About what time was that? A. About a quarter to 3 or 3 o'clock.

Q. When did you next see the master, Mr. Giffin? A. Following noontime.

Q. Where was that? [186] A. On the bridge.

The Court: By "following noontime," do you mean the same day, the day of the collision?

The Witness: The same day, at noon.

Q. Do you recall any meetings in the captain's cabin before noon? A. I am sorry—I do, yes, sir.

Q. What time did that meeting take place about, if you know? A. It must have been 6—well, all I can say is I do not remember the time.

Q. It was earlier in the morning than noontime? A. I had forgotten that until you called it to my attention.

Q. Who called you to that meeting? A. The master to my knowledge.

Q. Did he telephone you? A. No. He sent somebody after me but I do not remember who.

Q. Where were you at the time? A. I don't remember that. I must have been in my cabin but I don't know.

Q. If you don't remember be quite frank about it. We do not want anything but your best recollection together with the help of these logs and so forth.

I know this is a long time ago, Mr. Giffin, but [187] you did however go to the master's room? A. We convened in the purser's room.

Q. Was the master there? A. Yes.

Q. Didn't you find out then where he had been before that?

Mr. Estabrook: I object to that question.

The Court: Sustained.

Q. Did anybody present tell you where the master had been during the time that you were looking for him?

Mr. Estabrook: That is objected to.

The Court: Objection sustained.

Q. Did you have any discussion with any person present, or consultation, concerning the whereabouts of the master while you were looking for him on your watch?

Mr. Estabrook: I object to that.

The Court: While the master was present?

Q. The master was present, wasn't he, Mr. Giffin? A. I don't remember whether he was there or not.

Q. You don't remember whether he was at this meeting or not? A. Oh, the master was at the meeting, yes.

Q. Well, did you have a conversation with anyone concerning where the master had been while you were looking for him while on watch and if so with whom? [188] A. At the time of this meeting in the purser's room——

> The Court: At that meeting was the master present?
>
> The Witness: He was.
>
> The Court: Did you have any conversation at that time, in the presence of the master, respecting his whereabouts on the ship prior to the meeting?
>
> The Witness: Yes.
>
> The Court: Only if the master was present.
>
> The Witness: The master was present.

Q. Who did you speak to? A. I don't recall, it might have been the purser or the chief officer or the second officer. It was one of the people present at the meeting.

Q. And what did you say to him and what did he say to you? A. I asked if the whereabouts of the master had been found and I was told that he was found on the chief engineer's bunk in the chief engineer's cabin.

Q. Did anyone tell you about what time he was found there? A. No.

Q. What was the purpose of this meeting in the purser's office, if you know? Did the master tell you? A. It was suggested that we draft some sort of an entry for the log book.

[189] Q. This would be for the events that occurred on your watch? A. Yes.

Q. Had you previously done that? A. No.

Q. For what reason was it suggested? A. It was suggested that I wait before making an entry in the logbook.

Q. Who made the suggestion? A. Possibly the chief officer—I really don't remember.

Q. You did however wait? A. I did.

Q. Did anybody do any writing at this meeting? A. Yes.

Q. Who? A. The purser made a rough draft.

Q. Who else did any writing? A. Then I made the entries for the logbook myself.

Q. You copied the purser's draft? A. That is right.

Q. And is that what appears in Libelant's Exhibit J (indicating) on the extra page, in red ink? A. That is my handwriting (indicating).

Q. And that is the writing that you have just told us about? A. To the best of my knowledge, yes.

Q. That was written some time after 6 o'clock in the morning? A. That is right.

Q. Who was present at that meeting?

[190] The Court: When you state "That is my handwriting," did you have reference to the matter in red ink or in red pencil on that page?

The Witness: The entire page, your Honor.

The Court: All in your handwriting?

The Witness: Yes, sir.

Q. Who was present at that meeting, Mr. Giffin? A. The four mates and the purser and the master.

Q. Can you tell us what the master's condition was at that time, physically? A. At that time he seemed all right.

Q. You mean that he had sobered up?

Mr. Estabrook: Oh, I object to that, your Honor.

The Court: Sustained.

Q. Did the master give any instructions during the writing of this logbook?

Mr. Estabrook: I object to that question and I suggest the witness be asked whether the master said anything.

The Court: Isn't that what the question was—make any suggestions?

Mr. Estabrook: I must object to the word "instructions."

The Court: He was the master of course, but let |191| us call it suggestions.

Q. What did the master say? A. I cannot remember. I know there was something said but I cannot remember what it was.

Q. Will it refresh your recollection if you were to read your entry. You have seen the book now but prior to that you had not seen that entry in many years? A. I looked it over this morning.

The Court: Ask the witness to read it to himself and perhaps that will refresh his recollection.

Q. Will you do that, Mr. Giffin, and tell us whether there is anything in there which refreshes your recollection as to anything the master may have said during this preparation of a draft by the purser? A. There seems to be something about danger signal were blown and that is all I remember.

Q. Were danger signals blown to your knowledge? A. Only by the other ship.

The Court: We will take a short recess now, gentlemen.

(Short recess.)

The Court: Proceed, gentlemen.

Q. After the meeting in the purser's room and the log was written up what did you next do? A. I don't know. I probably went to bed.

[192] Q. What time did the ship get under way, if you know? You may look at the logbook if you need it. A. Yes, I would have to have the logbook to answer that.

Q. Here it is (handing). A. At 1:48 P. M. we had "standby engines," that is the afternoon. At 2:04 the anchor was weighed and at 2:05 we had standby engines because of fog coming in, and at 2:05 we let the anchor go again.

Q. That was on your watch? A. In the afternoon, and then at 2:30 in the afternoon we had standby engines and at 2:41 we started away.

Q. You were on watch? A. I was the officer on watch.

Q. After you started away did the master come on the bridge? A. He was on the bridge at the time.

Q. And did you observe his appearance and condition at that time? A. I did.

Q. Was it different than it had been at 6 o'clock in the morning when the log was written up? A. No.

Q. He was all right then? A. He seemed to be all right, yes.

Q. On your watch the following morning, from 12 to 4. [193] did you have occasion to see the master again? A. Yes.

Q. What was his condition at that time as you observed it? A. This is after we picked up the pilot.

Q. This is after 12 midnight. I don't know where you were. A. It would be at half past 1 the following morning.

Q. That you next saw him? A. After my afternoon watch.

Q. After your afternoon watch when did you next see him? A. At that time, at 1:30 in the morning.

Q. Then that would be 1:30 on the morning of June 6th? A. That is right.

Q. Did you observe his condition at that time? A. I did.

Q. You were proceeding up the coast? A. By this time we had picked up the pilot and were entering New York Harbor with the pilot on board.

Q. Then you did not see the master from the time you went off watch at 4 o'clock on the afternoon of the 5th until half past 1 the next morning, is that right? A. I don't believe so. I may have seen him at dinnertime but I don't remember.

Q. You entered New York Harbor and picked up a pilot without the master on the bridge? [194] We did.

Q. Where was he, do you know? A. I could not find him.

Q. Did you telephone his room? A. I did.

Q. Did you send someone to look for him? A. I did.

Q. Who had command of the ship? A. As I say by this time we were at the Ambrose Light Vessel, the pilot station. The second officer came up to give me a hand to signal the pilot vessel and to stop the ship so that the pilot could come aboard.

Q. So you and the second officer took over command of the ship at that time? A. In so many words, yes.

Q. You picked up the pilot yourself? A. That is right.

Q. And you got under way again? A. That is right, under the pilot's directions and orders.

Q. You and the second mate remained on the bridge? A. No, the second officer went below and I stayed on watch.

Q. When did you next see the captain? A. A few minutes after the pilot was aboard.

Q. Did you observe his condition at that time? A. I did.

Q. What was it? How did he appear to you to be? A. All right.

[195] Q. He was all right? A. Yes.

Q. Did you ask him where he had been? A. No, sir.

Q. Well, wasn't he astonished to find that someone had taken over command of the ship, stopped her and picked up the pilot without calling him? A. If he was he made no mention of it.

Q. Did you smell his breath at that time? A. No.

Did you smell his breath at the time just prior to the collision the previous morning? A. Yes.

Q. What did it smell like? A. Alcohol.

Q. And didn't you explain to the master what was done and why? A. I probably did.

Q. And he had no comment to make? A. No, sir.

From the time you left your anchorage until you arrived in New York Harbor at anytime that you saw him he appeared perfectly all right to you? A. I would like to clarify that. By "all right," I don't mean all right, I mean in the usual state.

Q. And what was his usual state? A. Being under the influence of alcohol.

Mr. Estabrook: I move that that be stricken out.

The Court: Strike it out.

[196] Q. Do you mean drunk?

Mr. Estabrook: I object to that question.

The Court: Sustained.

Q. Will you describe what you call his usual appearance? A. May I say not rational.

Mr. Estabrook: I object, your Honor. This man is not qualified.

The Court: Yes, strike it out.

I will allow him to testify, Mr. Dow, to some of the things the master did or said, but I will not permit him to draw conclusions of his own.

Q. Will you describe the master's actions, appearance, and the things he said and did? A. I realize I should not have used the term in that sense, but after picking up the anchor and starting toward New York in the afternoon we had an identical situation to the collision on our departure.

Q. What happened? A. A vessel was bearing down on us on the starboard bow, a loaded tanker. I called the master's attention to it, he acknowledged it, and maintained course. It was only upon my vehement insistance that we altered course to the right and passed clear of the other vessel.

Q. Did you have any occasion like that again on the way up? [197] A. No, not on the way up. This occasion occurred on the return trip to New York.

The Court: This last occasion you speak of occurred you say on your return voyage to New York?

The Witness: Yes, sir.

Q. That was after you had left your anchorage and started up? A. That is right.

Q. Will you tell the Court what the master said and what he did and how he looked and how he acted—speak

right to the Court, not to me, I just ask the questions. A. When the other vessel's bearing and course was reported to the master——

Q. Was she a privileged or burdened vessel, speaking now of the tanker? A. She was the privileged vessel again and the master was very impatient and kept saying, "All right, I see him."

I reminded the captain that the vessel was coming more and more near us on a danger angle and again he said, "All right." I cannot remember his exact words, but at the last minute I told the helmsman myself, "hard right," and we swung right and just cleared the stern of the other vessel.

Q. Will you again, Mr. Giffin, tell the Court at that [198] time how the captain looked and how he acted?

The Court: Hasn't he indicated to us some of the master's statements and actions on that occations? Is there anything else he said or anything else he did that you want to emphasize?

The Witness: The only thing, your Honor, I feel he seemed to be under the influence of alcohol too often.

The Court: Did you see him walking?

The Witness: I did.

The Court: Did he walk a straight course?

The Witness: He was unsteady at times.

The Court: Did he engage in conversation with you respecting the movements of the ship or anything at that time?

The Witness: Not to my knowledge.

The Court: Were the statements that he made to you at any time, in answer to your questions, or statements, were they lucid?

The Witness: By lucid, do you mean clear, sir?

The Court: Clear. Were they responsive to the questions you may have asked him or statements that you may have made to him?

The Witness: Yes, your Honor, they were clear [199] but they were not rational statements.

The Court: I think we have had enough on that, Mr. Dow.

Q. By "lucid" you mean that you could hear what he said? A. Yes.

Q. But it would not be responsive to the situation? A. It would not be conducive to the well being of the vessel.

The Court: What was that last statement?

The Witness: I say what he said would not be conducive to the well being of the vessel.

Q. And he was in that same condition or a different condition after he came on the bridge, after you had picked up the pilot? A. That was true.

Q. The same condition? A. Yes, sir.

The Court. I think we have had enough of that now, Mr. Dow.

Q. Going back now to those moments just before the collision, Mr. Griffin, beginning when you were making your left swing from the anchorage. A. Yes.

Q. If you recall, I know this is a long time ago, if you recall could you have left the lightship on your port hand as well as your starboard hand? [200] A. As I mentioned earlier I had a chance to review the chart this morning and I would say yes to that question.

Q. You would say yes? A. It is usually customary to have the light vessel on the starboard hand anyway.

Q. You mean leave it to port? A. Leave it to port.

Q. Could you have left it to port as well? A. Yes.

Q. Was there anything to prevent your going to the right, up to the pilot boat? A. Nothing.

Q. How far away was the Hellenic Beach then? A. About three or four miles at the time that we were at the lightship.

The Court: We had all this before, did we not, Mr. Dow?

Mr. Dow: Not just that way, your Honor—the distance of three or four miles when he first started.

Q. What was the distance from the light vessel? A. It follows it must be three miles because we were supposed to be bearing a mile from the light vessel. I would say three or four miles but I cannot just give you the definite distance.

[201] Q. After you passed the light vessel you could have gone south? A. Yes.

Q. And avoided the collision? A. That is right.

Q. During the intervening time between then and the collision—strike that out.

You are familiar with the maneuvering characteristics of your ship, you had seen her handled in different ways? A. Yes.

Q. And under a hard right rudder did she respond quickly or slowly? A. At full speed ahead she would respond quickly.

Q. You were going full speed ahead? A. I was.

Q. After you put her full speed astern would she respond more quickly or less with the right-hand wheel and going full astern? A. It would be less.

Q. She would go faster—— A. When she gathers momentum then it takes more time to stop her and then again the engines are not so powerful when going astern as they are when going ahead.

Q. Speaking of turning would she turn faster under a hard right wheel and full astern? [202] A. I cannot answer that.

Q. Your recollection is that she would turn fast under full speed? A. She would.

Q. How far away would you estimate you could be from another ship, approaching on a collision course, with the wheel hard right and avoid a collision?

The Court: Wouldn't that depend upon the speed of the ships?

Q. With the speed of this ship that it was going at that time? A. Well, this again is an estimation on my part, but I would say 50 yards.

Mr. Dow: You may inquire.

Cross-Examination by Mr. Estabrook:

Q. How long is the Exmouth, Mr. Giffin? A. If I may look at the log.

Q. Please close the book.

The Court: Do you have any independent recollection of the length of the Exmouth?

The Witness: I would say 355 feet.

Q. And what horsepower has she got? A. 7500.

[203] Q. What is her beam, do you remember? A. 53 feet. I have been away from sea for quite some time now.

Q. What is her turning circle? A. What do you mean?

Q. Well, if you were going along right and a hard right rudder was put over how far will she go ahead; in other words, what is the radius of the circle around which she will turn?

Mr. Dow: If he knows.

The Witness: If I remember correctly it would be the equivalent of six ships' lengths.

Q. One ship length according to your recollection is over 100 yards? A. Yes.

Q. If you have the Hellenic Beach coming down broad on your starboard bow you could avoid a vessel at a distance of 50 yards by going to a hard right rudder? A. Again I am estimating but it would depend on the angle of the two vessels.

Q. Assuming that the Hellenic Beach is coming down approximately broad on your starboard bow, bearing there and heading across your course at an angle of approximately—well, assume that you are 260 degrees and the Hellenic Beach is 124 degrees—can you see that in your mind? [204] A. Yes, sir.

Q. Well, if you were to get within 50 yards of the Hellenic Beach, she coming down at 9 knots, do you still believe that you could avoid collision by turning right at a distance of 50 yards? A. When I made the statement 50 yards I was not applying those conditions to the case.

What I had in mind would be two vessels coming head-on with each other.

Q. You had it with two vessels coming exactly head-on and you thought by prompt action you could swing clear at 50 yards? A. Yes, that was my estimate.

Q. Provided the other vessel also swung? A. Yes.

Q. That was your own personal estimation? A. For what it is worth, yes, sir.

Q. How long has it been since you have been to sea? A. Almost three years.

Q. Mr. Giffin, will you tell us again where the Hellenic Beach appeared to you as the Exmouth was abeam the lightship? A. Do you mean the relative bearing?

Q. The relative bearing in distance. A. I think three or four points on the starboard bow.

Q. And how far off? [205] A. Well, you have the lightship abeam, you say? A. Yes. I understood you said three or four miles. Would that be correct? A. I believe that is what I said.

Q. With the Hellenic Beach three or four miles away when you passed the lightship there would have been plenty of room for you to pass her port to port, wouldn't there? A. Yes.

Q. Now, here are rulers, dividers and a pencil.

Will you please indicate on the chart where the Exmouth was when she passed abeam the lightship? A. Yes, sir. I would say approximately right here (indicating on chart).

Q. Would you write there the word Exmouth? A. Yes, sir (witness writing).

Q. Now, where was the Hellenic Beach? A. Approximately about here (indicating), right near the pilot vessel.

Q. Will you mark that HB? A. Yes, sir (witness marking).

Q. How far apart are the vessels as you have plotted them? Will you measure that distance please. A. Yes, but my estimate of distance is at night—anyhow this is about three miles (indicating).

[206] Q. What time did you pass the lightship abeam? A. I would have to refer to the logbook, but I would say around 2 o'clock.

Q. What time was the collision? A. 2:05.

Q. By the way what did you see of the Hellenic Beach; you say you saw her masthead light, range light and her port side light? A. Yes.

Q. About what course was she on, as far as you can presently determine? A. She was coming on as far as I know—she was heading in this direction (indicating).

Q. Will you draw a line with an arrow to show the course, from the right? A. May I make it clear that these are estimations.

The Court: We understand.

Q. I am sure that his Honor realizes that. A. I would say it was about like this (indicating on chart).

Q. The lights were almost in line then, is that correct? A. No.

Q. Well, was she heading out that far? A. As I say she had apparently just let the pilot off because I mentioned that it looked like she had just dropped the pilot and he was coming out.

[207] Q. Did it appear that she was coming out to the southward or out to the eastward? A. I have no idea.

Q. There is no reason why she could not have gone the other side of the lightship, is there? A. None.

Q. You could have laid a course straight for Five Fathom Light which is the customary turning point for northbound vessels, is it not? A. Yes.

Q. What is your best estimate of the speed of the Exmouth as you passed the light vessel? A. I said 15 or 16 knots.

Q. What is that based on Mr. Giffin? A. Revolutions and our maneuvering speed.

Q. Is there a maneuvering speed on the Exmouth? A. They have maneuvering speeds, yes.

Q. And what was that full speed? A. 60 revolutions.

Q. And what speed did that give you? A. Almost 15 or 15½.

Q. What was the pitch of the propeller on the Exmouth, do you know? A. No, I do not recall.

Q. You mean that you were going 15 knots over the bottom or through the water? A. I would say 15½ over the bottom because we had a [208] favorable tide.

Q. Would you say about 12 knots through the water? A. I have no idea.

Q. Would you dispute 12 knots through the water? A. I really don't know.

> The Court: Have we available the strength of the tide, Mr. Estabrook?
>
> Mr. Estabrook: Yes, there was a flood tide and on the current chart we have a table indicating one to one and a half knots.

* * *

[209] *By Mr. Estabrook:*

Q. There has been testimony that the Hellenic Beach had a maximum speed of 11 knots and was not going over 9 knots after she dropped the pilot.

If the Hellenic Beach was going 9 and the Exmouth's speed was 15 knots, how long would it take for them to come together? A. Now, I know there is a formula for that, but I have not worked it for many years and I have completely forgotten it.

Q. Isn't it true that a vessel at 10 knots takes six minutes to go a mile; isn't that true? A. I would presume so.

Q. And isn't it true that a vessel of 15 knots takes four minutes to go a mile; isn't that true? A. Yes.

Q. So wouldn't it be true that your distance here of [210] three miles, at 2 o'clock, is too great, that the two vessels could not possibly have come together even at the highest speed testified to? A. I did not specify certain speeds, I estimated.

Q. I understand that. You estimated three miles? A. Yes.

Q. And you estimated that it was safe for the Exmouth to come right past on the estimated speed of the Hellenic Beach? A. Yes.

Q. The point is, Mr. Giffin, if your estimate visually is wrong then your estimate of proper navigation is also wrong; isn't that true? A. I don't see how.

Q. Mr. Giffin, let us go to the log again.

Mr. Estabrook: I will give you, Mr. Dow, a photostat of the log so that you can follow this (handing).

The Court: Is this chart that you have just used an exhibit?

Mr. Estabrook: I offer it as an Exmouth's exhibit at this time.

The Court: Mark it, Mr. Clerk.

(Chart No. 1219 U. S. Coast & Geodetic Survey used by the witness, received and marked Respondent's [211] Exhibit N.

Q. When the Exmouth was abeam at Overfalls, what course was she on? A. About 285.

Q. Referring to the Exmouth's rough bridge log which has been marked Respondent's Exhibit J in evidence, at

Sunday, June 5th, there is an entry on the right-hand page written in black pencil an entry reading:

> "1:42—standby engines." And then going to "2 o'clock, Overfalls Lightship abeam starboard side close by."

Is that in your handwriting? A. Yes.

Q. Were these entries made at the time they occurred? A. All except possibly the 2 o'clock abeam.

Q. But after the collision did the lights go out on the ship? A. Yes.

Q. And you went down to the boats? A. I did.

Q. You left the logbook on the bridge, did you not? A. Yes.

Q. When you came back you received the suggestion that you stated that you delay writing the rest of the entries until you had a chance to talk to somebody? A. This is before the anchor had been dropped.

Q. In your opinion did you have more immediate things [212] to do than writing a log until the anchor had been dropped?

> Mr. Dow: I object to the form of that question.
> Mr. Estabrook: I will withdraw the question.

Q. You were busy, weren't you, until the anchor was dropped? A. Yes.

Q. What was the damage to the Exmouth from the collision? A. All I know there was a hole in her starboard side.

Q. Did water come in? A. Some water entered.

Q. Did the ship heel over? A. She did.

Q. How big was the hole in the starboard side? A. I have no idea, but I would say a rather large hole.

* * *

Q. When you came to write up the log—I would like to go over this sentence by sentence, beginning with the first line, did you make any suggestion to the purser as to how it should be written up? A. I believe we all had some words with him about it.

Q. The first sentence is: "2 A. M.—Overfalls Light Vessel abeam, starboard side close by," is it not? A. Yes.

[213] Q. Is that true? A. Yes.

Q. The next sentence is, "While proceeding to pilot station with vessel being maneuvered by master to pick up pilot."

Is that true as far as it goes, up to the word "pilot"? A. The statement itself, yes.

Q. And the next sentence is: "Unknown vessel which had been reported to bridge a few minutes previous was found to be rapidly bearing down upon us on our starboard bow."

Is that true? A. May I say that that was written under duress.

Q. Is it true—I am asking whether this statement is correct? A. The words "reported a few minutes earlier" is not quite right——

Q. What should it be? A. It could be "a few minutes earlier," depending upon the interpretation of "a few minutes."

Q. Well, what is your interpretation of a few minutes?

The Court: Can you answer the question? You used the term "a few minutes." What did you mean by that?

The Witness: That is not entirely my own doings, sir. A few minutes at that time being the most suitable to enter in the logbook.

[214] Q. Is it true.

The Court: Is the statement which was read to you from the logbook true?

The Witness: Not the whole, no.

Q. What is in error with the term "a few minutes"? A. It could be ten minutes before or 15 minutes—not just a few minutes.

Q. You mean you understand the word "few" any time up to 15 minutes; is that correct? A. Possibly.

Q. And the Hellenic Beach certainly was not reported to the bridge 15 minutes before the collision, was it? A. No.

Q. How long before the collision was she reported to the bridge, was it before or after the Exmouth passed the lightship? A. Before the Exmouth passed the lightship.

Q. How long before? A. Again just a couple of minutes.

Q. So the collision was five minutes after she passed the lightship? A. Yes.

Q. Do you believe that ten minutes is not a few minutes; is that your only quibble or complaint about the word "few"? A. I do not want to be pinned down by a technicality.

You would prefer to have the exact time instead of [215] "a few minutes"? A. I said the statement was correct before but if you pin it down to two or three minutes then it is not correct.

Mr. Dow: I must object to this questioning, your Honor. I think counsel should be instructed to ask the witness how many minutes before was it reported.

The Court: I will give the witness an opportunity to explain what he meant by his answer.

Q. Would you have preferred to use another word or another sentence than "a few minutes" in the log? A. Yes.

Q. And that was in the morning? A. This was written in the morning.

Q. If nobody else had spoken to you would you have preferred to have used another expression than "a few minutes"? A. Yes, sir.

Q. What would you have preferred to use? A. I would rather have used a number of minutes.

Q. It then goes on to state:

> "As soon as danger of collision was recognized danger signals were blown and maneuvers made to avoid the collision."

Did you write that? A. I did.

Q. Is that true? [210] A. It is not true.

Q. What in your opinion should have been written?

> The Court: When you say it is not true, do you mean no such signals were blown?
>
> The Witness: No signals were blown at all immediately prior to the collision.

Q. No danger signals were blown by the Exmouth at all, is that correct? A. I did not hear them at all. These are the words of somebody else.

Q. And this sentence, "A maneuver was made to avoid collision." Do you agree to that?

> The Court: Is that statement correct?
>
> The Witness: Conceivably, yes.
>
> The Court: What does "conceivably yes" mean? We are trying to find out whether this statement is true or not. Were maneuvers made?

The Witness: They were made, yes.

The Court: To avoid collision?

The Witness: Yes.

The Court: Then would you say that statement is true, that log entry is true?

The Witness: I guess so, yes.

By Mr. Estabrook:

[217] Q. And then this statement in the log:

"2:05 A. M. unknown vessel struck our starboard side at the after end of amidships house with her bow and bounced off."

Is that true? A. That is right.

Q. And then the further statement:

"Striking the bulwark aft. A stop bell was given immediately and crew was mustered at boat stations while extent of damage was being ascertained."

Is that true? A. Yes.

Q. And this statement "Unknown vessel failed to stop and identify herself or offer any assistance."

Is that true? A. Yes.

Q. And is that statement true:

"Anchor was dropped. Vessel's lights went out and were restored in a very few minutes."

Is that statement true? A. Yes.

Q. And is this statement true:

"First aid treatment was given to injured crew members who were later removed to shore by the Lewes station Coast Guard."

Is that true? A. To the best of my knowledge, yes.

[218] Q. And it also appears later on? A. Yes.

Q. Then your only criticism of that entry as I see it is not to any of the times but to the statement that danger signals were blown by the Exmouth; is that correct? A. That is right.

Q. You testified that the Exmouth was by you estimated to be 350 feet long? A. I believe I said 355.

Q. Will you agree—well, I will ask counsel.

* * *

Q. With that estimation that the Exmouth was 439.2 feet in length you would have to increase, would you not, the distance that you could safely make a turn—she is a longer ship that you had thought?

The Court: Do you say you could make that turn within six ships' lengths?

The Witness: Yes.

The Court: Well, we know what the length of the ship is now and it is just a question of mathematics, Mr. Estabrook.

Mr. Dow: That is a complete circle, Mr. Estabrook?

Q. The radius of the circle, isn't that right? [219] A. Yes.

Q. You observed the Exmouth after the collision, did you not? A. I did.

Q. I show you a photograph, Mr. Giffin, and ask you if that is not a fair representation of the Exmouth at the point of im...t (handing)? A. That is it.

Mr. Estabrook: I offer that photograph in evidence.

(Photograph referred to received and marked Respondent's Exhibit O.)

Q. What is your present job, Mr. Giffin? A. At the present time I was studying commercial art and I am working in a restaurant.

Q. Have you had any medical training? A. None, just first aid.

Q. Do you consider yourself an expert in intoxication? A. I do not.

Q. Or in determining whether others are intoxicated? A. I believe we all do that.

Q. In other words, you rely on your common sense? A. I rely on my every day observations, yes, sir.

Q. Mr. Giffin, do you have any means of determining whether or not any person has a cerebral injury? [220] A. No.

Q. You know nothing about neurological tests, do you? A. I have nothing to do with medicine.

Q. Do you remember testifying before the Coast Guard on June 9th—that would be three days after the collision? A. I know that I testified at the Coast Guard hearings.

Q. And do you remember being asked these questions and giving these answers, and I read to you now from the transcript of the Coast Guard hearings at page 98:

> "Q. Did you have an opportunity to observe the general physical appearance of the captain when you came on watch and during the time you were upon the bridge with him? A. Yes."

Do you remember that? A. Yes.

Q. This was on the early morning watch of the day of the collision, Sunday, June 5th?

> The Court: During which watch the collision occurred.
>
> Mr. Estabrook: Yes, sir.

Q. Do you remember that question and answer? A. Yes.

Q. And do you remember this question being asked of you:

"Q. Did his condition appear to be normal in every [221] respect? A. No."

Do you recall that? A. Yes.

Q. Do you recall this question being asked you:

"Q. In what way was it abnormal? A. He acted as if he had been drinking."

Do you recall that? A. Roughly, yes.

Q. Do you recall this question being asked you:

"Q. Could you smell liquor on his breath? A. Yes."

Do you recall that? A. That is right.

Q. How are you sure it was liquor? A. Well, let us say it was alcohol.

Q. How are you sure it was not mouth wash? A. Shall I answer that?

The Court: Well, yes, if you know.

The Witness: It would be mighty fine mouth-wash.

Q. Did you make any test of the master, beyond that? A. No.

Q. Then I ask you now if you remember this question being asked of you:

"Q. Noticeably? A. Yes.

"Q. Was he steady on his feet? A. To my recollection he was reasonably steady."

[222] Do you recall that? A. I might have said that.

Q. Do you remember this question being asked of you:

"Q. Did you observe anything else in respect to his general physical appearance which you could bring before the Board? A. No, I believe that is all."

Do you recall that? A. I think so.

Q. You recall testifying by deposition in Norfolk, Virginia, on April 23, 1952, do you not? A. I don't recall the date. I recall the deposition, yes, sir.

Q. At that time do you recall being asked these questions and giving these answers, and I read to you now from page 82 of your deposition as follows:

"Q. You were subject to his orders then but you are not now. In your honest opinion was the captain drunk at the time of the collision?"

Then there was an objection and after some colloquy the question was asked as follows:

"Q. In your opinion was the captain drunk?"

A. That question, that very same question was put to me in the same manner before.

[223] "Let me say I had reasons for believing so at that time but he was knocked off, he banged his head. I found this out later on."

Do you recall being asked those questions and giving those answers? A. I would like to clarify that and say that it was suggested that I say that.

I recall saying it, yes, sir.

Q. You were given a copy of the captain's physical examination report, were you not? A. I don't recall that.

Q. Were any promises made to you? A. I don't recall any promises.

Q. You were asked that question, were you not, and you gave that answer, did you not? A. I believe so.

Q. You were under oath at the time, were you not? A. I was.

Q. Were you discharged by the American Export Lines, Mr. Giffin? A. I was.

Q. Do you recall being asked these questions and giving these answers:

> "Q. He did not bang his head until after the collision."

[224] A. Now you are asking me before the collision or afterwards?

> "Q. I am asking you before the collision. A. You used the word drunk, will you define that for me accurately."

Do you recall that question and answer? A. I do not quite remember the rest that was read. Was that the same statement?

> Mr. Estabrook: This is colloquy. The first question was: "He did not bang his head until after the collision. Now are you asking me before the collision or afterwards?

Q. That was asked of you; is that true? A. It might be.

Q. Were you asked this question:

> "Q. I am asking you before the collision. A. You used the word drunk. Will you define that for me, please, accurately?
>
> "Q. Well, perhaps I should rephrase the question then. Do you think he was under the influence

of liquor to such an extent that he could not command his vessel? A. No, I do not honestly feel that, I don't feel that way."

[225] Do you recall making those answers? A. No, I don't recall it.

Mr. Estabrook: Mr. Dow, do you concede that the answers were made as read?

Mr. Dow: I only know what I read here. You were examining your witness. I am not quarreling with the transcript.

The Witness: May I say this——

The Court: Unless Mr. Dow states otherwise I will assume that you are reading accurately from the transcript, Mr. Estabrook.

What were you about to say, Mr. Giffin?

The Witness: That is about it. I don't remember exactly what I said.

Q. Do you remember this:

"Q. Do you think he was capable of command of the vessel? A. Yes."

Do you recall that? A. No, I don't recall that.

Q. Now this was in 1952, was it not?

The Court: The witness says he does not remember the date.

Mr. Dow: Was he in the employ of the company at [226] that time?

Mr. Estabrook: He was.

Q. You were in the employ of the American Export Lines at that time, were you not, Mr. Giffin? A. I was.

Q. Now reading to you from page 58——

Mr. Estabrook: At this time, your Honor, in view of the witness's conflicting statements and the fact that it has been shown that he has no experience in the medical line, I move to strike from the record any remarks about the master being intoxicated.

The Court: You objected to that question when he was asked it by your opponent and I sustained the objection. He then testified to certain statements that the master made and certain actions that the master did. I admitted that and if that is what you ask to have stricken I deny the motion.

Mr. Estabrook: The thing that I move to strike out is the conclusion of the witness.

The Court: I have given no consideration to the witness's conclusions and I thought I had struck the conclusions out.

Mr. Estabrook: Very well, your Honor.

Q. Now reading from page 58, line 15 of the deposition, [227] I will ask if you remember this question being asked of you and your making this answer:

"Q. You don't know then whether you were turning right, toward the other ship on your starboard bow until the time the vessels were 75 feet apart, as you testified at the Coast Guard hearing? A. I cannot truthfully say that now."

Do you recall that question and answer? A. It is possible I said that.

Q. And this question:

"Q. You don't know? A. I don't know."

Do you recall that? A. I don't know.

Q. Going back to the whistle signals on the Exmouth did you hear a two-blast signal from the Exmouth? A. I believe I stated I heard two blasts, possibly more.

Q. From the Exmouth? A. Yes.

Q. That was the time the master ordered hard left? A. Just previous to the collision itself.

Q. Did you hear any whistles from the Hellenic Beach? A. I heard her danger signal.

Q. When did you hear that? A. Just a few seconds before.

Q. Your hearing is quite good? [228] A. I think so.

Q. The starboard door of the wheel house was open? A. Yes.

Q. Did you go out on the starboard wing of the bridge? A. During what time?

Q. Before the collision? A. I recall going out to get a bearing on the Overfalls Lightship, as she was abeam.

Q. Did you go out again? A. I don't remember, only after the collision.

Q. How did you take the bearing of the Hellenic Beach, through the port holes? A. I took a visual bearing.

Q. Through the port holes? A. Yes.

Q. You can see better on the wing of the bridge, can you not? A. You can.

Q. Did you have any difficulty in hearing her whistle signals when she blew only one? A. I heard her danger signals.

Q. Did you hear that loud and clear? A. Loud and clear.

Q. You heard two blasts from the Exmouth. How far away would you say the Hellenic Beach was when you heard those two blasts? A. She was upon us.

Q. How far? A. I have no idea.

[229] Q. Would you say 100 feet? A. Not that far.

Q. 50 feet? A. Not that far.

Q. This is very important, Mr. Giffin? A. The bow of the ship loomed before my eyes—that is very close.

Q. I want you to forget any animosity you may have toward the American Export Lines. A. I feel no animosity whatsoever.

Mr. Dow: I object, if the Court pleases.

The Court: I do not think any such statement is called for, Mr. Estabrook.

Q. The Exmouth blew only one signal to the best of your recollection, isn't that true? A. I still do not attribute that as a signal.

Q. She blew a whistle only twice? A. I recall two blasts of the whistle.

Q. Is that the only time that you heard the Exmouth blow? A. That is correct.

The Court: I thought you said at the time she blew the Hellenic Beach was upon her.

The Witness: That is right.

The Court: Using some point in this courtroom can you tell us how far away from the Exmouth the [230] Hellenic Beach was at the time you heard the two-blast signal?

The Witness: Between 10 or 15 feet, your Honor, no further.

Mr. Estabrook: I have no further questions.

Redirect Examination by Mr. Doze:

Q. Mr. Giffin, can you suggest any reason or give the Court any reason—remember you are under oath now—

why the testimony taken at Norfolk might conceivably vary a little from that before the Coast Guard and the testimony given here today.

Please think that over and tell the Court and I want your honest answer. A. Certain possibilities were suggested to me.

Q. By whom? A. By Mr. Estabrook and I agreed that such things might conceivably be possible.

Q. In the logbook, that red pencil entry which you copied from the purser's notes, are maneuvers referred to there, maneuvers that you believe best designed, you, yourself, best designed to avoid collision?

> Mr. Estabrook: I object to that question on the ground that the term in the logbook uses just the [231] statement "maneuvers." It does not say went to the left or went to the right.
>
> The Court: Whatever the maneuvers were. I believe this witness is qualified to answer that.

* * *

By Mr. Dow:

Q. The maneuvers referred to in the red pencil notes which you made in the logbook from the purser's draft refer to "maneuvers made to avoid collision"? A. Yes.

Q. In your opinion were those maneuvers made to avoid collision the maneuvers which in your opinion were best [232] designed to effect that result? A. At that time, yes.

Q. Why at that time? What do you mean by that? A. Any maneuver at that time would have been for the best.

Q. In your opinion could any other maneuvers have been made that would have avoided the collision? A. No, not at that time.

Q. At what time? A. Just previous to the collision, prior to the collision.

Q. So that when you agreed with what was in the log-book when Mr. Estabrook examined you, then do I understand that what you meant was that those maneuvers there referred to the ship's maneuvers just a few moments before the collision took place? A. That is correct.

Q. From the time you first saw the Hellenic Beach and you told the captain about it and the mate or the lookout forward commenced a series of telephone reports to the bridge, were you then in maneuvers, were there any maneuvers made at that time to avoid the collision? A. There was one maneuver, yes.

Q. Which one was that? A. After we had started swinging to the left.

Q. Had it been completely executed would that have [233] avoided the collision? A. Probably, yes.

> The Court: Are you referring now to the time that the master ordered hard left and you and the helmsman suggested that it should be hard right? Is that the time you mean?
>
> The Witness: Yes, sir.
>
> The Court: Didn't you testify earlier this morning that had there been a hard right turn there would have been no collision?
>
> The Witness: If we had made the hard right turn instead of the hard left at that time.
>
> The Court: There would have been no collision?
>
> The Witness: That is right.

* * *

Q. Is that correct? [234] A. Yes.

Q. Now, five minutes before the collision or three minutes before the collision could you have avoided the collision by other maneuvers? A. I would say yes.

Q. Or four minutes? A. I don't know how close.

The Court: Isn't it important to know the time and the distance?

Q. After the collision did you look to see if the Hellenic Beach was blinking to the pilot boat or to anybody? A. After I put the captain on his feet I look for the Hellenic Beach but she had disappeared completely.

Might I say that by this time a fog had set in.

Q. Did you use your blinker to blink anybody? A. I believe we did but I am not sure.

Q. Did you communicate with anybody on your blinker? A. Not to my knowledge at this time.

Mr. Dow: I will ask the Court to take judicial notice of the fact that an object which turns a complete circle in a radius of six lengths will turn 90 degrees in approximately four and a fraction lengths, if the Court believes it is important to pay any attention to that.

[235] The Court: I certainly cannot take judicial notice of it. That is this witness's opinion as to the number of boat lengths in which he could make a turn. That of course does not necessarily make it a fact. Personally however I don't think it is important, Mr. Dow.

Q. It was suggested by Mr. Estabrook that if you went to the west of the lightship the Hellenic Beach could have come down and gone to the eastward of the lightship—do you recall that? A. I do not think that was asked.

Bernard E. Giffin—For Libelant—Redirect

Q. If the Hellenic Beach prior to the time when you first saw her had tried to go between the lightship and South Shoals Buoy to the eastward of the lightship, in so doing wouldn't she have necessarily crossed your bow? A. Are you asking me if the Hellenic Beach passed north of the lightship or way out east would she have crossed our bow?

Q. Assuming when you saw the Hellenic Beach, after you passed south of the lightship—— A. We passed south.

Q. Then I think you said she bore three or four points on your starboard bow.

Now had she made a left turn to go to the other [236] side of the lightship she would eventually have headed towards you to do it, wouldn't she?

The Court: I think Mr. Dow is making reference to the course that you indicated here (indicating chart), which would bring you into the Five Fathom Shoals—is that the one you mean?

The Witness: He said if it was possible could they have gone north of the lightship on the way out, and I suggested it was possible.

I can picture us passing south of the lightship on the heading 285 degrees or whatever it is, and the Hellenic Beach would be heading east southeast.

Q. At that time—you have been a seaman for how many years, Mr. Giffin? A. Sixteen years.

Q. You told us before you were the burdened vessel? A. Yes.

Q. The other vessel was the privileged vessel? A. That is right.

Q. What is the obligation of the privileged vessel in a situation in which you then were? A. Keep out of the way of the vessel.

Q. The obligation of the privileged vessel, Mr. Giffin. In other words, what obligation was on the Hellenic Beach.

[237] You have told us your obligation was to keep out of the way. A. The Hellenic Beach you mean?

Q. Yes. A. He was to maintain speed and course.

Mr. Dow: That is all.

Recross Examination by Mr. Estabrook:

Q. Will you please look at the chart which you previously marked, I am speaking now of Exhibit Exmouth 9.

If the Exmouth was passing the light vessel on a south course of 290 or 285 and the Hellenic Beach was proceeding out toward Five Fathom Shoals the vessels would meet and pass well clear to starboard, would they not? A. In that case, yes.

Mr. Estabrook: I have no further questions.

(Witness excused.)

The Court: We shall recess for luncheon, gentlemen. Please return here promptly at 2 o'clock.

(Recess taken until 2 o'clock P. M.)

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[238] AFTERNOON SESSION.

Mr. Dow: Your Honor, I have my doctor here. I should like to call him now as a witness.

The Court: Call him.

IRVING BALENSWEIG, called as a witness on behalf of the libelant, having been first duly sworn, testified as follows:

Direct Examination by Mr. Dow:

Dr. Balensweig, what is your profession? A. I am a physician and surgeon.

Q. Where is your office located? A. In No. 667 Madison Avenue, New York, N. Y.

Q. In the interest of saving time, Doctor, will you state your qualifications? A. I graduated from Cornell University Medical College in 1918.

I was licensed to practice medicine in the State of New York in 1918.

I trained in general surgery at the New York Hospital and I trained in orthopedic surgery at the Hospital for the Ruptured and Crippled on 42nd Street and also at t' St. Giles Hospital for Crippled Children at Port Je[illegible]son.

[239] I have since been associated with Cornell University, teaching orthopedics since 1920.

I am attending surgeon at the New York Hospital in orthopedic surgery and I am associated with the hospital, the New York Hospital for Ruptured and Crippled, and several other hospitals.

Q. Doctor, did you teach medicine as well at Cornell University Medical College? A. I taught orthopedic surgery.

Q. And have you had experience in trauma? A. Yes, sir, I am a member of the original Committee on Trauma of the American College of Surgeons and am also connected with several hospitals and have been for a number of years as traumatic surgeon.

Q. I show you a document which has been marked here Respondent's Exhibit L and I ask you if you have ever seen that before (handing)? A. Yes, sir.

Q. What is it, Doctor? A. These are records from the Marine Hospital at Stapleton, Staten Island.

Q. Have you examined that report? A. Yes.

Q. And have you examined the daily reports contained therein? A. Yes.

Q. And the charts as well? A. I reviewed every page of this, yes, sir.

[240] Q. Doctor, can you express an opinion on what ailed the subject of that examination when he was admitted to the hospital? A. Well, I will say that yes, I can.

Q. Will you tell us what it is in your own way and in your own words? A. I have reviewed this entire record and I have noted the history and I have concluded for myself that this man presented perhaps two problems, the dominating problem being one of an anxiety state based upon delirium tremens.

In other words, I feel that this is an instance of alcoholism and the condition may have been assisted by trauma —whether the trauma helped to flare up the delirium tremens or a portion of it I could not state.

I note from the record that in my opinion it was not a head injury of any moment because the record specifically states that this man had ordered for him by the doctors codeine, grain ½, every four hours, and yet the words "head injury" are used thereafter.

Now, one does not use any sedation that will in any way interfere with the five senses where there is an expected head injury nor does one attempt to use any drugs like morphine where a head injury is indicated.

Definitely we do not use codeine. We do occasion-[241] ally use phenobarbital and we can use paraldehyde, but that is used more frequently for alcoholism.

Also I notice here there is ordered seconal, grain 1½, and that was ordered on June 14, 1949, and I refer to page 7 of this report.

1½ grains of seconal is not to be recommended to one who is suspected of having a head injury. There is no exception to phenobarbital, grain ½.

The Court: Is there any X-ray picture contained within that report, Doctor?

The Witness: Yes, sir. There is an X-ray of the skull.

The Court: What does it say and show?

The Witness: It states here that at the request of the doctors an X-ray report—the request was made on June 14, 1949, and the report is dated June 16th.

It states that it is routine films of the skull and show no X-ray evidence of fracture or prolonged intracranial pressure.

There is stated that there is seen a venous lake about one centimeter in diameter which is apparent in the posterior parietal region on the left side.

Incidentally, it states that there is a large external occipital protuberance.

[242] Essentially it is a perfectly normal skull. A protuberance, in other words, is a bump in the back of the head. The venous lake is where the veins and the lines of the skull come together and a small amount of blood may clot there or gather there for a time but that is of no significance.

Q. Those x-rays were made on the order and at the directions of the physician attending him? A. Yes, sir.

It is on page 7 and it is labeled "Doctor's orders," and then the doctor handling the matter, Dr. Ormsbee, signed it. I notice that one of the names here is Dr. Boswell, it so seems to me to read and I do not know the other one but it looks like Ormsbee. Then there is another name that I cannot make out.

The Court: Have you concluded your answer to Mr. Dow's question?

The Witness: No.

The Court: Proceed, please.

The Witness: I furthermore felt that the intention tremors described here is not that found in a head injury and by intention tremor we mean where an individual is reaching for an object that the tremor then becomes more pronounced. That is an accompaniment [243] in a condition such as alcoholism or drugs, it is not an accompaniment of a head injury. A head injury patient does not have intention tremor. If you have a chronic head injury where a patient may have some meningeal condition he may have intention tremors, such as the ataxia defect—it is found also in syphilis but an intention tremor in this early stage speaks for alcoholism or some other thing that has a similar end result.

The Court: Such as?

The Witness: Well, I suppose you can get an intention tremor in multiple sclerosis. You can sometimes get an intention tremor in a cerebellum disease.

The Court: I had reference to the use of the word alcohol or some other drug.

The Witness: There are specific drugs that produce it and there are diseases of the spine that will give you that.

In Parkinson's disease which you see fairly commonly the individual may have a tremor of the hands and arms and other conditions, but as he approaches an object and holds it the tremor is materially lessened and is sometimes absent so it is really the opposite of an intention tremor.

[244] Then I note here—I am trying to eliminate the portions which would confuse the issue.

I notice that Dr. Somberg was asked for a consultation—this shows at page 19 of the report.

Mr. Estabrook: What is the date of that?

The Witness: The date rendered was June 20, 1949.

The Court: Continue, please.

The Witness: The doctor states that the tremor had improved—and it says here "cranials all negative." That means of course that there is no involvement of the cranial nerves. There was no nystagmus.

The Court: What is the date that this subject entered the hospital?

The Witness: On June 13th at 11 P. M.

The Court: And the collision occurred on June 4th?

Mr. Estabrook: On the morning of June 5th, your Honor.

The Witness: This goes on and says:

"No nystagmus," and that means there is no quivering of the eye. That is a common finding in a head injury.

Then it says: "Tremor of the tongue, both hands and so forth." Now, I cannot distinguish this word [245] here. I don't know whether it says "motor" or not.

The Court: Would a magnifying glass help you any, Doctor?

The Witness: Perhaps (handed). I simply cannot make that word out.

I know that one is motor.

It says further here "deep reflexes." I believe it says here "equal" and then I cannot distinguish the last word, and then it says "no pathological reflexes," which is important.

If this man had a cerebral injury sufficient to give him tremors he should have increased reflexes.

I also notice here as Dr. Somberg started to evaluate the case—"a lesion of the cerebellum and extra pyridamil system involvement."

They are abnormal reflexes which this sort of a thing does not have.

The Court: Is that in the report?

The Witness: Yes. He says here, "No pathological reflexes." If there were any pathological reflexes he mentions what they are.

It says here, "Abdominal reflexes O. K."

If a man has a disease, a nerve disease such as multiple sclerosis, for instance, the abdominal [246] symptoms are absent.

Then it states here, "Anxiety state and mild degenerative lesion of cerebellum and extra pyramidal system."

Now, the man from my evaluation of the report here did not show evidence of a cerebellum disease or extra pyramidal disease.

The Court: Is that usually associated with a trauma?

The Witness: No. A cerebelli disease is not a trauma. You have to look for cerebellum injuries and you also have here injury of the extra pyramidol tract which are tracts which pass up and down the spinal cord and you have what is called a pyramidol tract lesion or injuries which give rise to certain phenomena but it states here no abnormal reflexes so I cannot understand the rationale of the diagnosis based on what is shown here.

I do not know what Dr. Somberg had in mind.

The Court: Of course he had the subject before him?

The Witness: Of course.

The Court: And it would make it simpler for him to locate this than where it is observed objectively?

[247] The Witness: Yes, but a consultant is usually requested to be specific. He was consulted by request and we expect the consultant to pin himself down to a diagnosis.

Then there is of course the question of the mechanism of the injury. We have here a history which states that the man fell from the bridge, a height of thirty feet.

We have a history which states that he slid across the deck 30 feet and he hit his head and shoulder.

By Mr. Dow:

Q. Does that say, Doctor, something about 30 feet? A. It reads here that on June 8, 1949, during a collision——

The Court: That is June 5th, I think.

The Witness: Well, it says here June 8th, during a collision, fell across deck striking head and fell hitting his head and shoulder.

Then at page 4 it states, "Sea captain, was standing on bridge of his ship at 2:05 A. M. on June 8, 1949. There was slight fog as ship approached Philadelphia and as they were ready to pick up the pilot the ship was struck by another and captain was thrown against a bulkhead"—then there is a word that I cannot make out—it says "struck the deck." Then it goes on to [248] say, "Sustained injury to his head posteriorly and strained his right side. Was unconscious for about one-half a minute.

"Following this was dizzy and somewhat confused, had a jumbling of his thoughts. Following this he remained home for several days and began to develop very severe headaches in occipital region and right temporal region two days after accident. Also developed uncontrollable tremors of arms and legs. Seems to have more tremors on right side."

Q. Excuse me, Doctor. Where did this information come from, is this what the patient said when he went in or is it what somebody says for him? A. This comes from the doctor that takes the history and it should come from the patient. If it is not from the patient the doctor usually mentions the source of the information.

Q. Continue, Doctor. A. Then it says, "Seems to have more tremors on right side. On reaching for object seems to be a slight increase. No visual disturbance, appeared to be somewhat dazed 'felt stupid.' No weakness in his extremities, had some difficulty walking because of persistent dizziness.

"Headaches continue, dull, aching type, did not [249] radiate. No difficulty chewing, moving tongue or closing eyes——"

The Court: Well, of course the original question was answered, Doctor. You were asked to give your opinion.

The Witness: I did but I am not quite finished with the opinion because I am trying to take out the things which are mentioned here that might result in one condition or another and analyze them.

I note from the record and these are nurse's notes under the date 6/14/49, "12:15," that means fifteen minutes after midnight because the next notation is "1 A. M.—admited via wheelchair. Tremors of hands. Breath smells of alcohol—asking for sedations. Using fingers to induce vomiting unsuccessfully."

That is not customary for an individual and I have never seen a head injury patient that did—and I have seen a great deal of head injuries—I have never seen a head injury patient trying to create vomiting by his own act. In other words, an individual sticks his fingers down his throat and it would be to relieve his stomach, to feel better, and that is not the accompaniment of a head injury but rather the accompaniment of imbibing.

[250] The Court: Well, could a person having some stomach distress have also a head injury at the same time?

The Witness: Oh, yes. As I stated at the beginning there really seems to be two problems here, one of some disturbance resulting in tremors and associated with imbibing and the other a possible head injury.

I think that would cover the substance of the contents of the report.

By Mr. Doze:

Q. Before you go on, Doctor, although I only glanced at it briefly and I know nothing about those things I do notice that there are charts in there with little lines going up and down. A. Yes.

Q. Is there any significance to those? A. Well, the first one is on page 16—are you referring to this chart (indicating)?

Q. There seems to be more than one. A. There are two of them. This is the temperature-pulse-respiration chart and this was taken according to custom approximately every two hours.

Whenever an individual has a head injury it is customary to take the pulse and respiration every two hours and also blood pressure in order to determine whether there [251] is any progression of bleeding. If a man has a head injury and has bleeding within the skull cavity there would be certain changes in the pulse, temperature and respiration rate.

If you have bleeding the pulse will slow down and the blood pressure will go up. If it stops the pulse rate is usually rapid and the blood pressure may be low. Again, that is a variable picture but at least we do know that he did not have any bleeding within the contents of the skull that would cause any interference with respiration, pulse or temperature.

The second part—this is the daily chart of temperature-pulse-respiration taken twice a day.

We have a man here who has negative x-rays and yet he was charged with a diagnosis of concussion of the brain

and anxiety tremors. It is therefore hard to evaluate from that.

Q. In your opinion, Doctor, does the summation following the information contained in the balance of the record——

The Court: I haven't heard any summation yet.

The Witness: I believe counsel means summary.

The Court: Well, is there a prognosis or a summary report there?

Mr. Dow: There is a narrative summary, your Honor.

The Court: Is the question directed to that?

[252] Mr. Dow: Yes, sir.

The Witness: At page 2—narrative summary:

"Date of Admission: June 13, 1949. Date of discharge: June 24, 1949.

"Patient is 57 years old, white, A. S. who was admitted to neurological service from June 13, 1949.

"While aboard ship on June 8, 1949, during a fog the ship was involved in a collision with another ship and patient was thrown against the bulkhead striking his head and right side of body.

"He states he was unconscious for about half a minute and subsequently was dizzy and confused. However patient was able to ambulate and return to his home for bed rest.

"He subsequently developed very severe headaches in the occipital region and left temporal region two days after the accident and also developed uncontrollable tremors of the arms and legs. These seem to be worse on the right side. On reaching for objects patient also had an intention tremor. There

are no visual disturbances. The patient apparently felt that he was confused and dazed.

"There was some difficulty in walking because of persistent dizziness. This was of a subjective type.

[253] "The headaches are continuous, dull, aching in type and did not radiate.

"Because of the persistence of these symptoms patient was subsequently admitted to hospital June 13, 1949.

"Examination on admission revealed patient to be very apprehensive and anxious and has a very obvious coarse intention tremor. Laboratory and touch sensation were intact but there was some weakness of the upper and lower extremities.

"X-rays of the skull and lumbrosacral spine were negative.

"On June 20, 1949, patient was seen in neurosurgical consultation and it was noted that the above-described tremors had improved. Cranial nerves were intact. There was no nystagmus. There was a tremor of the tongue, both hands and lower extremities.

"All the deep tendon reflexes were equal and normal and there was no pathology of reflexes noted. Sensation was intact throughout.

"There was mild tremor at rest and also intention tremors.

"Ataxia was also noted. Had atiadokokinesis"—that is a test for coordination, having the patient [254] turn his hands rapidly and they cannot do it, they get sloppy, their hands go all over the lot. It is a neurological test to show incoordination.

The impression, given here by the neurosurgical consultant, was that the patient probably had an anxiety state and also some mild diffused degenerative lesion of the cerebellum and the pyramidal system.

(Contin..ng reading): "On June 21, 1949, patient was transferred to surgical service because of persistence of headaches, dizziness, tremors, and so forth.

"The patient received sedation and psychotherapy on numerous occasions.

"There was marked improvement on this regime and the tremors rapidly subsided. Patient's apprehensive state also subsided.

"Remainder of hospital stay was uneventful. Discharged June 24, 1949, condition improved, prognosis good, two weeks convalescence."

The diagnosis given is:

"Diagnosis: Concussion of brain anxiety state."

Q. Do you wish to rationalize that with what you just stated before, Doctor? A. I think that covers it pretty well. I have tried to [255] remember whether the man actually had psychotherapy.

One does not give a head injury in the early stages psychotherapy. The time that it is recommended for head injuries is perhaps six months or up to two years later when we hope that we can influence him by psychotherapy.

Psychotherapy is something you give to people after some period of time, with a head injury, and therefore in other words the diagnosis of anxiety state here does not fit the trauma.

The Court: I think the doctor has covered the report thoroughly, Mr. Dow.

Mr. Dow: I have no further questions.

Cross-Examination by Mr. Estabrook:

Q. Doctor, you are primarily an orthopedist? A. I am an orthopedic surgeon.

Q. And you could of course give a better report here had you actually seen and observed Captain Eklund, could you not? A. Oh, I think the report here is of itself of great value.

Q. But you could do better if you saw the man? A. I suppose.

Q. And it is of course possible, Doctor, that certain items that you would observe would not be reflected in that [256] report, isn't that so? A. Well, I don't suppose any report includes all, in other words, there might be something not down here, a report does not always contain all the facts.

Q. Well, Doctor——

Mr. Dow: Please let him finish.

The Witness: I have finished.

Q. Isn't it true in your private practice you make it a point to see the patients themselves? A. Naturally.

Q. Could I have the report, please, Doctor? A. Certainly (handing).

Q. You do not agree I take it with Dr. Boswell's recommendation of seconal? A. I would not agree with that amount in respect to a head injury.

Q. On the top of this page there is written "Routine head injury care indicated."

Do you see that? A. Yes.

Q. That's the first day the man was in the hospital. A. Yes.

Q. Is phenobarbital indicated for head injuries? A. Yes.

Q. But the seconal you would disagree with that? [257] A. I would disagree with that dosage. Whoever prescribed this prescribed phenobarbital, grains ½, every four hours and then it prescribes 1½ grains of seconal on the top of that, on the same day.

Q. That you do not believe should be done? A. No, I would not recommend it.

Q. Then, Doctor, there is the question of codeine on the 16th. A. Yes.

Q. And again on the 18th. A. Yes.

Q. Those are three diagnoses you do not agree with? A. Those are not diagnoses.

Q. I mean the three orders prescribed here? A. That's right.

Q. You would not give them in your cases? A. Not with respect to head injuries.

Q. Did you find in this record any indication of a diagnosis, any writing indicating a diagnosis of either alcoholism or delirium tremens? A. There is no diagnosis of either of those two.

As I mentioned before, he was admitted in a wheelchair and you have the statement in the report that there was an alcoholic breath.

Q. But the diagnosis, or rather the order for phenobarbital on the 14th is consistent with a head injury, is [258] it not? A. It is used with head injuries, yes.

Q. And the order for phenobarbital on the 20th is consistent with a head injury, is it not? A. That's all right, there is no objection to that.

Q. And that is repeated again, is it not? A. That's right.

Q. Now, Doctor, for safety's sake, if a man has a history of a head injury you would of course not give either seconal or codeine until you were sure? A. I would not give 1½ grains, I said.

Q. Until you had had an X-ray report? A. You can have a skull injury with a negative report.

Q. But to give seconal before you get the X-ray report, you would not do that, would you? A. What is an X-ray report?

The Court: Was your objection to seconal as to the dosage?

The Witness: Yes, 1½ grains is too much. I did not object to the use of it, that is, to the use of seconal per se but I said that I would not prescribe 1½ grains of seconal in the instance of a head injury, especially where just before that, on the same day, he had been receiving ½ grain of phenobarbital every four hours.

[259] Q. That would be especially bad if you had not yet received the report of the X-rays? A. We do not go by X-rays. We do not recommend on head injuries that the patient must be X-rayed immediately.

Q. In other words, a negative X-ray does not by itself rule out head injuries by any means? A. No, it does not. Head X-ray is done at the proper time without disturbing the patient so that if he does have positive X-rays you can know it. You don't make a diagnosis from a head X-ray.

Q. When the man came in he had some neurological tests, did he not? A. Yes, he had the usual tests.

Q. I call your attention to the fact that on this page here (indicating)—aren't they neurological tests? A. Some of them, yes.

Q. Well, what is the first? A. It says, "Left side of face and left foot, decreased sensation and pain."

Q. Is that consistent with a head injury? A. It could be possibly a head injury but it is not at all specific.

Q. It is however consistent? A. Yes, and the significance about reaction to hot and cold, [260] that has no significance.

It then reads further as follows:

"Reflexes—knee jerk absent bilaterally." That of course need have no causation. In other words, there are many normal people who would have that.

Q. What else does it say? A. I repeat that knee jerks present on right—this looks like "decreased"——

Q. Decreased? A. Markedly decreased on left.

Q. Well, is a knee jerk consistent with a head injury? A. Not necessarily.

Q. But is it consistent? A. A decrease in jerk reflexes more often speaks for a spinal cord injury.

Q. It is, however, consistent with cerebral injury? A. The word consistent is not correct, counselor.

The Court: It could be present?

The Witness: Yes.

Q. Please go on, Doctor. A. Koenig—negative. Chaddock—negative. Babinski—negative.

There are the reflexes that you look for.

There is a positive Romberg—that is a swaying.

Q. Is that consistent with a head injury?

The Court: You use the word consistent, Mr. Estabrook, and the Doctor insists on telling you that [261] the word is confusing to him.

It can be present, can't it, Doctor?

The Witness: It can be present in a head injury.

Then it stated that finger pointing was difficult and he had difficulty turning hands over rapidly——

Q. Is that one of the signs of a head injury? A. Well, finger pointing can be found in head injuries. The rapid turning of the hands—well, a man would have to have a long standing injury to exhibit that, this test of the rapid turning of the hands—again it could occur in a head injury of long standing.

The Court: Could it occur in this injury which antedated the hospitalization by only ten or twelve days?

The Witness: It is not likely.

Then there was some slight muscular weakness on the leg, arm, left leg——

Q. Is that a sign of a head injury? A. That can accompany a head injury.

Q. Doctor, this examination was made on what date? A. June 20, 1949.

Q. That is different from the report of Dr. Somberg, is it not? A. Dr. Somberg's report of course—he made his examination on the same day.

Q. Dr. Somberg found some cerebral difficulty, did he not? A. Some cerebral difficulty?

Q. Yes, a diffused and degenerative lesion of the cerebellum. A. In reading this again I see that it says diffused degenerative lesion of cerebellum and also of the extra pyramidal tract.

He takes in a lot of territory.

Q. Doctor, what is a concussion of the brain? A. Well, a concussion may occur as the result of a direct blow or an indirect blow or something going past the head at a very rapid rate of speed where the vibration can cause a concussion.

Q. What does it cause? A. Edema of the brain.

Q. What does that mean? A. An increase of the blood content of the brain, an increased tenseness of the structure which may be momentary and can result in many symptoms depending upon the amount of concussion.

Q. Doctor, what is the treatment for a concussion? A. Bed rest.

Q. Doctor, concussion is quite common in football players, is it not?

The Court: Do you mean a temporary state?

[263] Q. Yes, you see the boys being taken out of the game; he can walk but he cannot count and they take him out of the game for a concussion and they give him bed rest, isn't that correct? A. It is rather hard to say whether that is concussion or not.

Q. Doctor, a blow in the head can cause a concussion? A. It can, yes.

However, if they had a concussion they should not walk them off the football field.

Q. They should be put to bed? A. Yes, but you bring out a stretcher and carry them off the field.

Q. Is it preferable in your opinion for a man with a concussion to try to do his regular work for two days, going up and down ladders? A. Do you ask me whether that is proper?

Q. Yes, is that proper treatment? A. No.

Q. Would that interfere, in your opinion, with a clearing up of a concussion? A. It might.

Q. Isn't it true, Doctor, that a concussion, a swelling of the brain, in many instances if the patient is given the proper rest, that the brain contracts and there is no interference with the brain by pressure with the interior of the [264] skull? A. Are you implying rest of the brain or rest of the individual? I do not want to be facetious here but you used the word "rest."

Q. Physical rest.

The Court: Let us call it bed rest.

Q. That is the best treatment, Doctor? A. That is the proper treatment.

Q. And if you do have bed rest, isn't it also entirely consistent that there will be no neurological findings within a fairly short time? A. You could not say that because that all depends on the gravity of the injury.

Q. But it can be? A. Yes.

Q. And the difference between a serious cerebral case and one that is "tried in the Municipal Court" is that a man with a serious cerebral injury has continuing neurological symptoms while the man who has a concussion and a clear recovery has an absence of neurological symptoms, isn't that true, Doctor? A. As an overall picture, yes.

Q. Isn't it also true, Doctor, that Captain Eklund could have had a cerebral injury or could have had a concussion when he entered the hospital on June 13th and that one [265] week's bed rest could relieve him of neurological symptoms? A. Yes.

Q. So, Doctor, if you say that you are not testifying, are you, that the impression of concussion of the brain and the anxiety state on Captain Eklund's admission to the hospital is clearly wrong?

The Court: Can you answer that question categorically, Doctor?

The Witness: I did not question the notes, as I stated before. When I first sat down here I said that there are two problems involved.

Q. Well, will you answer my question? A. I think I already have answered it.

The Court: Repeat the question.

(Question repeated.)

A. No, I do not.

Q. You do put great reliance on Dr. Somberg's consultation on June 20th, do you not? A. No, I do not—I did not put any great reliance on that.

Q. And on the report thereof? In other words, the finding of the negative or absence of irregularity of the reflexes on June 20th has no special significance? A. He may have had no reflex changes, and that would certainly apply, even on your own statement, but when you ask [266] me to read from neurological examinations conducted on the same day by a different individual—where it states changes and then on the same day a neurological consultant found no changes—those changes did not clear up simultaneously between one examination and the other. I never said that Dr. Somberg's findings were negative.

That means that the man in my opinion, based upon Dr. Somberg's diagnosis, had no residual background of a cerebral injury.

The Court: They are neurological reports made by either a neurosurgeon or neurologist?

The Witness: No, your Honor, it is a routine physical examination.

The Court: You would not be inclined therefore to give great credence to them but would rely more on Dr. Somberg's background?

The Witness: On Dr. Somberg's examination, yes.

By Mr. Estabrook:

Q. Isn't it true, Doctor, that as to the last three or four days in the hospital the captain improved very rapidly? A. It appears so.

Q. Isn't it also true that prior to June 20th your principal reason for disbelieving the diagnosis of a head injury is the prescription of sedatives? [267] A. No, sir, and I did not state that I disbelieved the possibility of a head injury. I merely stated that it is my opinion that there is another element involved in this case with a far greater status than any suspected head injury.

My remarks were directed in that direction when I reviewed the file before the cross-examination.

Q. But you don't state, Doctor, that the finding of a head injury is clearly wrong, do you? A. I would not say that it is clearly wrong.

Mr. Estabrook: I have no further questions.

(Witness excused.)

MAX WHITNEY, called as a witness on behalf of the Libelant, having been first duly sworn, testified as follows:

Direct Examination by Mr. Dow:

Q. Where do you live, Mr. Whitney? A. No. 4686 Oleander Drive, Long Beach, California.

Q. When were you reached by our lawyers A. The night before last.

Q. And you have flown here? A. That is right.

Q. For the purpose of testifying in this trial? [268] A. Yes, sir.

Q. You have been served with a subpoena; is that correct? A. That is right.

Q. On June 5, 1949, were you a member of the crew of the SS Exmouth? A. Yes, sir, I was.

Q. How long had you been aboard the ship? A. Less than a full day.

Q. You had joined her the day before? A. I joined her about noon on June 4th.

Q. How long had you been going to sea at that time? A. At that time I had been going to sea since 1941.

The Court: About eight years at that time?

The Witness: Yes, sir.

Q. You are married, are you, and you live in your own apartment out there in California? A. Yes, sir, that is correct.

Q. You are not going to sea now? A. No, sir.

Q. What certificate do you hold or did you hold at the time? A. At that time I held an A.B. certificate with other lesser endorsements in the steward's department and in the engine department.

[269] Q. What was your position on the Exmouth? A. A.B.

Q. What watch did you have and what job did you have on that watch? A. I had the 12 to 4 watch, and on that watch I had the customary job of splitting between two hours steering and two hours lookout and standby.

Q. Did you take the wheel on the way south from New York on the 12 to 4 watch? A. Yes, sir, I did.

Q. On June 4th? A. Yes, sir.

Q. Who was the officer in charge of your watch? A. Mr. Giffin, the third mate.

Q. When did you first see the captain on that ship? A. The first time?

Q. The first time that you set eyes on him? A. The first time I saw him was at the time we were departing on the 4th, the 12 to 4 watch, right from this harbor.

I was at the wheel and he was in the wheelhouse.

Q. Did you have an opportunity to observe his appearance and demeanor? A. Yes.

Q. Did you come to any conclusion? A. No, I did not come to any conclusion during that watch.

He did have an accent and I was not certain whether —I could hear but I could not understand him well [270] so I was trying to judge the reason that I could not understand him, whether it was because of an accent or for any other reason.

Q. And on a subsequent watch did you observe him? A. Yes, on the next watch at midnight.

I came to the conclusion that it was not the accent that made him hard to understand. It was my opinion——

Mr. Estabrook: I object to anything further, your Honor.

The Court: With respect to this man's opinion as to whether he was drunk or intoxicated I will strike that out, Mr. Dow.

Mr. Dow: I was going to ask what the appearance of the captain was, your Honor. I expect to lead up to that conclusion.

The Court: Remember, I shall not allow him to express any conclusion.

Q. When you came on your 12 to 4 watch on the morning of June 6th, where were you when they weighed anchor? A. I was standing by just previous to going to the wheel and I was in the mess room part of the time and on the after deck for the rest of the time.

Q. When did you come up in the wheelhouse? A. Just a few minutes before 2 o'clock.

[271] The Court: I am sorry to interrupt, Mr. Dow, but did you ask this witness about June 6th?

Mr. Dow: If I did I was in error, your Honor. I meant June 5th.

The Court: Did the witness so understand?

The Witness: Yes, sir.

Q. You say that you were in the mess room part of the time? A. Yes.

Q. And on the after deck for the rest of the time? A. Yes.

Q. Now, when did you come up in the wheelhouse? A. Just a few minutes before 2 o'clock.

Q. Who was there at that time? A. The captain was there.

Q. Anybody else? A. The third mate and the man that I relieved was there.

Q. What happened to the man you relieved, did he go below? A. He went below. It would be his turn to be on standby for an hour.

Q. What did you observe about the captain at that time when you came to take over the wheel shortly before 2 o'clock? A. Well, it seemed to me——

[272] Q. Tell us how he looked to you, what his appearance was, what his speech sounded like, or anything of that nature that you can think of without drawing any con-

clusions from it. A. It was dark and I could not see him too well. I thought he was staggering but I was not certain of it because the ship was rolling.

I could not understand any of the orders that he gave me, partly because he was not speaking clearly and sometimes they did not make any sense.

In some of the cases, in the orders that he gave me, the captain stated the orders, and the third mate would ask him what he meant and the captain would make a statement as to what he did mean, and then the third mate would tell me.

Actually a number of times during the course of that watch it would take several sentences and a few moments of conversation to understand one small order.

Q. What was his voice like, what did he sound like? A. He was very difficult to understand.

Q. It sounded different than when you had heard it the first time? A. Yes. He had the same mumble as he had on the earlier watch but more so.

[273] The Court: Did you ever hear the expression "thickness" as it refers to speaking?

The Witness: Yes, sir, and that is it.

The Court: Would you say that you would describe his speech that way?

The Witness: Yes, that word describes pretty well what I was trying to say.

The Court: Proceed, Mr. Dow.

By Mr. Dow:

Q. What orders did you hear the captain give you? What was the first one that you can remember? A. The first ...?

Q. Yes. I know that it is a long time ago but you read over your Coast Guard statement, did you? A. Yes.

Q. When did you do that? A. That morning.

Q. Well, tell us the first order that the captain gave you? A. The first order the captain gave me—I think it was an order—was to steady up the ship which was swinging to the left as I relieved the other helmsman. I think he told me to steady her up and when I asked him what he meant the third mate asked him—finally I got the order from the third mate and I assume that the order the third mate [274] gave me was the same order that the captain had given me.

The Court: So the captain and the third mate conferred with you at the time this conversation was had where orders were given first to the third mate and then to you?

The Witness: Yes, sir.

The Court: You were all in the wheelhouse together?

The Witness: Yes, sir, closer than we are right here.

Q. What was your heading then, about? Do you have any recollection of that, roughly? A. I believe it was about 250 or 260 to the best of my memory.

Q. Did you see a lightship around there? A. I seen it just before I came on watch, but after I got on the wheel I was not standing in a place where I could see the lightship from.

The Court: Did you see it then?

The Witness: I did not see it after I got on the wheel, no.

Q. Did you see any other ships around from where you stood at the wheel? A. Not when I first came on the wheel, no.

Q. Shortly after however you did? [275] A. Yes.

Q. Had you left the lightship at that time; had you left it abaft your beam? A. I am not certain where the lightship was at any time.

Q. Don't hesitate to tell me if I am asking too much of your memory or your recollection or knowledge? A. Well, to begin with I don't remember seeing the lightship.

Q. Eventually did you notice there was a ship ahead of you somewhere? A. Yes.

Q. Where did you see it? A. When I first saw it it was about broad on the starboard bow.

Q. By that you mean about four points or 45 degrees? A. Yes, though that was some time after the captain and the mate had seen it.

I remember they were discussing it before that. Everything I saw they saw ahead of me because of their position.

Q. What was the nature of the conversation between the captain and the mate at the time?

The Court: This is between the witness and the mate or what?

Q. Was the mate pointing it out to the captain—[276] what were they talking about? A. I don't remember their exact words. I do remember—I can picture them in my mind standing together and looking out through the doorway of the bridge.

I think I remember one of them pointing to it but the words used, that I don't remember.

Q. Did the telephone from the forecastle head ring at any time? A. I don't remember that.

Q. Your job was paying attention to the wheel and steering the ship? A. That is right. All I can remember is what I did. The other details I cannot remember very well after all this time.

Q. That is perfectly all right. You are not under any obligation to elaborate in any way.

After you had been steering this course for a little while did you get an order to go right or left? A. Yes, I did.

Q. What order did you get? A. After the first order I just mentioned, which was to steady on her course, which I think then was 250 or 260 degrees, I received several orders to make minor changes of two or three degrees—I think there were three orders to that effect but all more or less going in the same [277] direction.

Q. Finally did you get an order to go right or left to a larger degree? A. Yes. After these small course changes I received an order from the captain at this time to come left and after moments pause he said come left 210.

When he said that I asked him if he did not mean to come right and the third mate said, "You mean come right, Captain," or some words to that effect.

However, the captain told me to continue to come left while he and the third mate went in the chart room to figure out whether they were going to come right or left.

Q. Then did they eventually come out of the chart room? A. The third mate came quite quickly and he stepped back out of the chart room and told me to steady it up where she was.

He was in the chart room and I was at the wheel looking at the compass and he said, "Steady her up where she is," and that is what I did.

The Court: Was that sailing left then?
The Witness: She was moving to the left.
The Court: To port?
The Witness: To the left, yes, sir.

[278] Q. And he said to steady her up there? A. Yes, sir.

Q. Did the third mate check the course on the chart—was that done, or would you know? A. I don't believe the third mate checked a particular course.

Q. You mean he just ducked in and ducked out?

The Court: He said, Mr. Dow, that he went into the chart room and then came out and said something. Obviously this witness can not tell what he did in the chart room.

Q. Did he spend much time in there?

The Court: He said that he came out right away or came out quickly?

How quickly?

The Witness: Two or three or four seconds.

Q. The captain was there. Was he still in the wheelhouse? A. Yes, and the third mate—yes, he was still there.

Q. And the third mate was in the wheelhouse with you. I mean they did not go out on the wing of the bridge and carry on more conversation, they stayed in the wheelhouse with you, did they? A. The minute the mate came out of

the chart room and told [279] me to steady her up the captain was still inside the chart room.

Q. And you steadied her up? A. Yes.

Q. Do you remember what she was steering then? A. No, that I don't remember.

Q. Were you steering at that time then by a compass course or just right and left and steady orders? A. At that time I was steering by a compass course that I corrected myself. I was steering a course that I knew we were after because I was given orders to steady her up on that course.

Q. Did you see the other ship at this time? Could you see her from where you were standing in the wheelhouse? A. No, I don't think I seen that ship yet—I do not think they had either.

Q. I am talking about the ship that struck you. A. I know.

Q. You are going across the Bay. You said before that they were pointing to a ship outside. Now you say you don't think they had seen it yet.

Are we talking about the same thing, Mr. Whitney? A. When I said they were pointing, I do not think they [280] were pointing to port. If I did say that I did not mean to say that. It was not in connection with this.

Q. At the time of these courses, go back, go right, go left—could you see the other ship—or could they? A. I don't think so.

Q. Do you mean you don't think they could or you could? A. I do not think I could have noticed any ship at that time.

The Court: He said he could not and I don't think he is competent to tell us whether they could or not.

Mr. Dow: What I am try to get at here with your Honor is——

Q. At the time this order was given to come left from about 260 to 310—— A. Yes.

Q. Was there a ship out there involved in all this, a ship that you know of, any other vessel? A. I learned later there was a ship out at that time I do not think I had seen the ship.

Q. This argument between them back and forth for a while as to whether to go right or go left—— A. Yes.

Q. How was that resolved?

The Court: Mr. Dow, your adversary arose [281] apparently for the purpose of objecting when you referred to something as an argument and I anticipate that was the basis for his objection.

I do not agree that there was an argument, just a difference of opinion and I do not know whether that is what was in the mind of Mr. Estabrook.

Mr. Estabrook: That is right, your Honor.

Q. How did this difference of opinion as to going right or left, how was it resolved? A. It was never settled, they never did decide how I was supposed to come to that course of 310.

Instead, while was still on the course they began noticing this other ship was approaching and getting closer and they were talking about it and we stayed on the course I had figured out myself—in other words, the ship was kept steady until the time almost that we hit this other ship.

Q. Did you get an order about the time of the collision? A. Yes, maybe one or two seconds before the actual collision.

Q. What was that order? A. I was given an order hard left, by the captain.

Q. By the captain? A. Yes.

Q. Did you do anything? [282] A. There wasn't time to do anything. The captain gave me the order hard left and the third mate said, "No, keep her steady," and the ship at that time happened to be swinging a little bit to the right of our course. So I began to give the ship some left wheel to at least bring her back to steady but before any amount of wheel had been put on the ship and before the ship had time to answer the other ship had struck us.

The Court: How was the ship between the time you speak of and the time or her hard left rudder, approximately?

The Witness: From the wheelhouse any object approaching you from that direction, you lose sight of it when it is a degree or so over the beam.

I had not seen the ship within ten seconds or so before she hit us.

The Court: Well, will you state again the time that elapsed until the time that you got the order hard left?

The Witness: I don't think it was but a few seconds.

The Court: We will recess now, gentlemen, until 10:30 o'clock tomorrow morning.

(Adjourned to January 7, 1955, at 10:30 o'clock A. M.)

[283] HELLENIC LINES, LTD., owner of SS HELLENIC BEACH,

vs.

SS EXMOUTH and AMERICAN EXPORT LINES, INC.

AMERICAN EXPORT LINES, as owner of SS EXMOUTH,

vs.

SS HELLENIC BEACH and HELLENIC LINES, LTD.

Brooklyn, New York
January 7, 1955.

Appearances:

(As heretofore noted.)

TRIAL CONTINUED

MAX WHITNEY, resumed, testified further as follows:

Direct Examination by Mr. Dove (Continued):

Q. Were you on rather a steady course for some time prior to the collision? A. Yes, we were.

Q. What course? A. We were on the course that I steadied on when the third mate returned from the chart room [284] and told me to steady wherever I was.

Q. About how long might you have been on that course, just speaking roughly? A. I think it was as much as three or four minutes.

Q. Where is the telephone located on the Exmouth? A. It would be behind me and to the left.

Q. And you stood at the wheel? A. Yes.

Q. Who usually answered the telephone? A. Anyone that is near it, except me.

Q. I think you told us—by the way, why not you? A. Well, I would be steering. Of course in case of an emergency or something it would be important that I would answer it, but as long as I was steering I ordinarily would not be disturbed.

Q. From your job? A. From my job.

Q. You told us yesterday you believed you did not recall hearing the telephone ringing on the bridge at all? A. I do not remember hearing it ring.

Q. It might have rung and you did not hear it? A. It might have, I just don't remember it.

Q. Is it possible that the other ship might have blown whistles and you did not hear them. A. Yes, I think that is possible but I did hear him blow whistles.

[285] Q. Do you mean is it possible he blew whistles that I did not hear besides the whistles that I did hear?

Q. Yes. A. Yes, that is possible. Ordinarily when I am steering it is not my job to listen to whistles or anything other than steer and just listen to orders and many things that do not concern me take place on the bridge that I do not pay any particular attention to.

Q. Whose duty is it to listen to whistles? A. The mate and the captain.

Q. Can you describe for us for what benefit it may be to the Court, a description of the situation on the bridge as it existed say five minutes prior to the collision—in a word or two—or general terms or something like that?

The Court: He can hardly be expected to describe in a word or two what lasted for five minutes. I think your question should be more specific, Mr. Dow.

Q. Say five minutes before the collision, was the bridge calm and orderly, was there no argument or question of discussion of any kind other than the usual orders that a master and a mate and a quartermaster would have? A. Well, five minutes before the collision I would say that things were still quiet, but the mate and the captain were quietly disputing with regard to the navigation of the [286] vessel, that is how to steer, what to do and whether to come right.

All during the watch when I was steering there was enough confusion and I think I can say enough dispute that it was difficult for me to decide exactly what to do. I constantly had to ask to have the orders repeated to me so that I would be certain as to what orders to obey and what was the last order and what they actually meant.

Q. Did this sort of thing continue right up until the time of the collision? A. At the time of the collision there was much more excitement. The mate was actually screaming at the captain, "He is going to hit us—he is going to hit us," but the excitement mounted by the time we got to the collision, by the time of the collision, when that time came the mate was very excited but the captain did not seem to be—the captain did not seem to know that there was any danger.

Q. Have you ever witnessed a similar situation in your years at sea or since on a ship or is this common, is this something that happens very often? A. I have never seen such a situation before.

Q. It was your watch at the wheel from 12 to 4 that afternoon when you left your anchorage to go to New York? A. You mean the afternoon following the collision?

[287] Q. Yes. A. Yes, I was on the wheel again.

Q. And Mr. Giffin was on the bridge with you? A. Yes.

Q. Was the captain there at that time? A. Yes, he was there too.

Q. Will you describe the captain's condition at that time with respect to his speech and what he did and what he said?

Mr. Estabrook: I object to this questioning, your Honor, I think it is irrelevant. It is 12 hours after the collision.

The Court: I will take it. Your objection is overruled.

The Witness: It seemed to me if anything the captain's speech and his orders to me were more confused than they had been prior to the time of the collision. It is hard for me to say exactly how the captain was speaking unless I imitate him. I can tell you how he was talking.

Q. Tell us in your own words.

The Court: What were the physical characteristics of his speech, not the words that he used necessarily or the statements that he made, but the physical [288] characteristics.

I think you said in response to a question of mine yesterday about a conversation, describing the manner of speech and not the content.

The Witness: The conversation—his speech was still thick as it had been the night before, but I

thought it was a little more clearer—I could more understand his words but I still could not understand his intention.

Q. How did he sound to you? Could you imitate it as you said a minute ago? A. He would say—he would stammer and contradict himself—he would say things like "Come right—I mean left—maybe 250—well, never mind." And he would just keep that up and never give—seldom giving me an order that clearly meant anything that I could execute or do.

Q. What was the visibility at that time? A. It changed throughout the watch. The fog came and left us at intervals.

Q. At what speed did you travel, if you remember? A. Mostly we traveled at full speed but several times during the course of the watch, after the captain would set the telegraph full ahead he would leave the wheelhouse and go to the chart room. Then the mate would come in and slow [289] the ship down by the telegraph lever and then as soon as the captain would come back to the bridge again he would make some kind of a joke or he would laugh and put it full ahead again.

Most of the time it was full ahead.

Q. Did you see any other vessels while you were on that watch? A. Yes, I did.

Q. How many? A. Two I remember definitely and I think there was a third one.

One of the vessels we came very close to having another collision as we had the night before, and the second one the vessels came close enough to have a collision and that is why we were all disturbed—the mate and I were disturbed—but the captain was not disturbed even then.

Q. Why was it you did not have a collision, was it something the captain did, or something the mate did?

The Court: Didn't we have this yesterday, something about a tanker and there was a steering hard to right—didn't he tell us about that yesterday?

Mr. Dow: That was the third mate, your Honor. We did not touch the voyage home with this gentleman.

Q. Will you tell the Court in a couple of words who [290] avoided this collision, the third mate or the captain, in your opinion? A. The third mate absolutely. The captain made no move of any kind, he gave no orders, no command, no move or anything.

Q. The third mate was on his toes, would you say? A. Yes, I thought he was acting competently but he may have been excited as officers often do when a collision is imminent.

Q. How long did you remain aboard the ship after you returned to New York? A. About three months.

Q. Then you left her employ? A. Well, I was forced to leave.

Q. What do you mean by that? A. After the ship arrived here from the next trip it made to Europe and when it arrived here in New York, the new chief mate came to me one morning and he told me, he said, "I have a technicality that I can fire you on if I want to but I will give you a break in order to keep you from getting blackballed with the company or damaging your record.

"You can quit if you want to, you might as well quit before I fire you."

Q. What happened? [291] A. So I quit.

Q. Were there any crew members who were on board the Exmouth at the time of the collision who were on the Exmouth at that time? A. Yes, about half the crew I guess.

Q. Did any others leave at that time also? A. Yes, on the same morning and on the same occasion one other able seaman was discharged under the same conditions, that is, he was offered an opportunity to quit before he was fired, and he also quit.

You had served on other ships with other companies since that time? A. Since then several, yes, sir.

Q. Were you ever fired or did you have any trouble after that? A. No, sir, I was not fired.

Q. Do you think you could go back to those companies and get a job if they had one? A. As far as I know I could go back to any other company I ever worked for with the possible exception of American Export, and as to them I don't know, I have never tried to go back there but I don't know, I doubt it.

Mr. Dow: I you may inquire.

[292] *Cross Examination by Mr. Estabrook*:

Q. Did you ever ask the Export Lines for employment since you left the Exmouth? A. No, sir.

Q. And the records show you resigned, do they not? A. I think they should, yes. I haven't seen the records though.

Q. You are telling us of a conversation that you had with the chief officer? A. Yes.

Q. What was his name? A. I don't remember his name any more but it was not the chief mate who was on the ship at the time of the collision. It was a new mate.

Q. It was not with the captain, was it—there was no conversation with the captain? A. No.

Mr. Estabrook: Your Honor, I move to strike out this testimony in regard to a conversation with the chief officer.

The Court: Motion denied.

Q. Did you make a complaint to your union grievance committee about being discharged from the Exmouth? A. No, not that I remember.

Q. You are a member of the Maritime Union, or you were at that time? [293] A. I still am.

Q. And you do have a grievance committee that protects members from arbitrary discharge, don't you? A. Yes, if you wish to keep the job.

The Court: Are you a seaman now?

The Witness: No, sir.

Q. What are you doing now, what is your present occupation? A. I am unemployed. Most of the last three years I have worked in shipyards on the West Coast.

Q. And at what job, as a rigger? A. As a rigger now, yes, but I began as a helper.

Q. You were on watch, were you not, the first time on the Exmouth from 1 until 2 on the afternoon of June 4th leaving New York? Isn't that when you were at the wheel, after leaving New York? A. Leaving New York I was at the wheel but I don't remember whether it was the first wheel watch or the second wheel watch of that 12 to 4 watch.

I think it must have been the second because I don't believe we sailed until——

Q. I show you the logbook and let me ask you if that refreshes your recollection (handing). A. Is it supposed to say so here?

[294] Q. Down at the bottom on the left-hand side of the page, doesn't it say "wheel and lookout"? A. By the logbook I was on the wheel from noon until 2.

Q. And you sailed at 1? A. Yes.

Q. So you were on the wheel about an hour on June 4th? A. Yes.

Q. You relieved early or on time? A. Normally I relieve about seven or eight minutes before the bell—sometimes I might be a minute or so late.

Q. The time you came to the bridge was about 6 or 7 minutes to 2 o'clock the next morning—that is when you stood the second wheel watch? A. Yes. Normally if I relieve on time and I don't remember whether I did now it would have been six or seven minutes until 2.

Q. Where had you been before that? A. Just previous to that I had been in the mess room as standby.

Q. Then you came to the bridge? A. Yes.

Q. What did you do when you came to the bridge? A. I went to the wheel. First I brought coffee up. I don't remember who I gave the coffee to, the captain or the mate, but I went to the wheel and I took over the wheel.

[295] Q. Did you take the wheel right away when you came up? A. Pretty quickly, yes.

Q. Will you describe the wheelhouse, was it dark or was it lighted? A. It was more or less dark.

Q. The compass was lighted? A. Yes, the compass was lighted.

Q. And there was a slight glow from it? A. Yes, and also there is a glow from the windows and the open doors and there is a light that comes from the chart room just behind you.

Q. How long did it take your eyes to get accustomed to the dark? A. On that particular occasion I don't remember but as a rule before I go on watch and before I relieve the wheel or lookout I step outside of the mess room door or if there is no one in the mess room I turn out the light and close my eyes and then open them. In other words, I give myself two or three or five minutes. That does take two or three minutes to get from the mess room to the

bridge and it is dark on the way up there, to accustom my eyes.

Q. Did you take five minutes on the clock at this time? A. That I don't remember.

Q. But you did get coffee and bring it up? [296] A. Yes.

Q. When you got to the bridge and took your position at the wheel you could see the course that you were steering, could you not? A. Yes.

Q. And you hear your own ship's whistles, can't you? A. Yes.

Q. I believe you testified that without looking outside you could not do that as well as the master or the mate or the lookout; is that correct? A. That is right.

Q. And hearing other ships' whistles you could not be sure the other ship had not blown because you were inside the wheelhouse? A. Yes.

Q. And the lookout should be able to hear better than you? A. Yes.

Q. About five minutes before the collision I believe you said you steadied down on a course on the mate's order to steady? A. Yes. I think I said three or four minutes.

Q. At any event you steadied down on a course shortly after the order was given to come left to 311 or something like that; is that correct? A. That is right.

Q. You then came left, the mate said steady, and you steadied; is that correct? [297] A. Yes.

Q. Have you any recollection of what that course was? A. I cannot say that I remember but I have seen my testimony at the Coast Guard, and I know I told them that to the best of my knowledge then I thought it was about 20 degrees to the left of the original course.

Q. In other words, about 230, something like that? A. 230 or maybe 240.

Q. That is your best present recollection, isn't it? A. Yes. Except for the course of 310 those courses were just —they were only my estimations.

The only course I remember for certain was the course of 310.

Q. You stayed on that course until just before the collision; isn't that correct? A. Yes.

Q. You testified something about a slight swing to the right. Do you mean a degree or so, that you just had to give a little left rudder to steady or how did you swing? A. It was less than a degree, maybe a half of a degree or a quarter of a degree.

Q. What whistles did you hear from the Exmouth? A. I no longer can remember what the whistles were, although I do remember whistles.

Q. You heard some whistles from the Hellenic Beach [298] just before the collision? A. Yes.

Q. How many blasts did you hear? A. I don't remember that.

Q. Do you recall this testimony as to the actions of the master—by the way, you recall testifying before the Coast Guard? A. Yes.

Q. Let me read to you from the transcript of that hearing at page 184 as follows:

> "Q. Did you observe the actions of the master following the collision? A. Yes.
>
> "Q. And will you tell the Board what you saw? A. He didn't do anything, he sat and watched. The mate was urging him to do something but he didn't.
>
> "Q. Specifically. A. The only thing he did was blow—he blew two whistles. The other ship answered him and we went on as usual, full ahead. And then we blew two whistles. I don't know

whether they answered the second time. About that time we got hit."

Do you recall that?

A. I remember making a similar statement. I take it for granted that they copied it correctly.

Q. Did you hear the Exmouth's whistle just before the [299] collision? A. Yes, I said that before.

Q. Within seconds of the collision? A. I don't remember that any more. I don't remember the exact instant.

Q. Can you tell us how long before the collision the Exmouth blew—can you tell us whether it was before or after you got your order for hard left, which was immediately before the collision? A. It was before.

Q. Did he blow two and then give you the order hard left? A. I don't remember how many whistles he blew and I don't remember whether at that time how close together they were. The only thing I do remember is that after he gave me the order hard left there were not any more orders given by the captain.

Q. Did you hear the mate report that he had ordered you to steady, to the captain? A. Hear him report what?

Q. That he had ordered you to steady, to the captain—did you hear him report that to the captain? A. No, I did not hear him report to him. The captain was right near him, we were all together, he could hear it.

Q. Mr. Whitney, did you smell liquor on the captain's [300] breath? A. No, I did not.

Q. At any time, either before or after the collision? A. No, I do not remember smelling liquor on his breath, sir, but I don't know whether I ever had the opportunity to either.

Q. You were all close together in the wheelhouse? A. By close together I mean four or five feet or six feet, up to ten feet.

Q. How big is the wheelhouse? A. Oh, I would say it is about 50 feet long and about 10 feet deep.

Q. And at 50 feet from one side to the other, isn't that correct, and then ten feet from front to back? A. The wheelhouse is not that long. The entire bridge is that long but the wheelhouse is less. The wheelhouse I would say is probably 25 feet.

Q. By ten feet? A. By ten feet or so; you do not have room to walk around in there though, that space is filled with machinery and so forth.

Q. So that if the captain was walking around he could not deliberately stay away, he would have to walk in the open spaces, isn't that correct? A. Yes, that is right.

Q. Do you personally drink intoxicating liquors? [301] A. Yes, but not when I am working.

Q. On direct examination, Mr. Whitney, my notes indicate that when the mate came out of the chart room and said to steady her up that the captain was in the chart room. A. Yes.

Q. That is what you testified to; is that correct? A. Yes.

Q. And you don't recall the mate later reporting to the captain that the ship was steadied, do you?

The Court: Do you remember that?

The Witness: I am trying to think. I don't remember whether he did or not.

Q. I show you the deck bell book, Mr. Whitney, marked Exmouth Exhibit K, for Sunday, June 5th.

That was the book that Mr. Giffin testified he kept and he wrote down the engine orders as they occurred.

I see only two full ahead signals on the 12 to 4 watch there.

Mr. Dow: I must object, your Honor. Unless Mr. Estabrook makes it clear to this man—he can ask him whether he has ever seen this before and if he knows what it means.

The Court: Is it in evidence?

Mr. Estabrook: Yes, sir.

[302] The Court: Well, show it to him.

Mr. Estabrook: Will you stipulate, Mr. Dow, that the entries in the bell book here show what happened?

Mr. Dow: At the time they were written in the book they were properly written.

Mr. Estabrook: And they reflect the orders given to the helm—to the engine rather?

Mr. Dow: Only from the time of anchorage to the collision, but after that I don't know anything about it.

Q. Then will you look at that book, please—on the 12 to 4 watch for Sunday, June 5th, in the afternoon.

The Court: Have you examined it now, Mr. Witness?

The Witness: I am still looking at them, your Honor. I do not understand all these terms in the book and some of the writing I cannot read.

Q. You understand the signals for the various speeds? A. Yes, I understand that.

Q. How many full ahead signals do you see on the 12 to 4 watch? A. I do not see the words full ahead written here at all.

Q. But you are familiar with the full ahead signal, that is the check with two lines? A. No, I am not.

[303] Q. In other words, you would have to see it all written out? A. Yes, I would.

Mr. Dow: Your Honor, these would be proper questions directed yesterday to the mate who was on watch.

The Court: This man is an able seaman.

* * *

[304] *By Mr. Estabrook:*

Q. Are you certain that the speed was changed from full ahead five times in the watch on the afternoon of Sunday, June 5th?

Mr. Dow: I object to that question as to form.

The Court: Objection sustained as to form.

Q. You testified on direct examination I believe that certain changes in the speed of the Exmouth were given by the mate on watch, slowing her down from full speed to either half speed or slow speed; isn't that correct? A. That is correct.

Q. And shortly thereafter the master would increase the speed to full ahead, isn't that correct? A. That is correct.

[305] Q. How many of those changes were there? A. I did not say because I do not remember exactly.

Q. Well, was there one or were there five or ten or can't you remember exactly? A. I cannot remember exactly. I can guess.

The Court: Can you give us your best estimate as to how many there were?

The Witness: I will say three. Of course the logbook only shows two.

Q. The logbook shows two full speeds called for. The bell book only one slowing down. She was still going full speed at 4 o'clock? A. I still say *3*.

Mr. Estabrook: I have no further questions.

(Witness excused.)

PRESTON WILLIAMS, called as a witness on behalf of the Libelant, having been first duly sworn, testified as follows:

Direct Examination by Mr. Dove:

Q. Where do you live, Mr. Williams? A. In Wyckoff, New Jersey.

Q. What is your present business? A. I work in a machine shop, buying and manufacturing [306] machinery.

Q. You have a home in Wyckoff, do you? A. Yes, sir.

Q. Are you married there? A. No, sir.

Q. Do you live with your family? A. No, sir.

Q. You have your own home by yourself? A. That is right.

Q. And you are appearing here under subpoena? A. Yes, sir.

Q. In June of 1949 were you employed aboard the SS Exmouth? A. I was.

Q. What was your position? A. I was senior assistant purser and pharmacist's mate.

Q. And how long had you had that position aboard the Exmouth? A. Something over a year, I believe.

Q. How long were you there after that? A. I would say about another year.

Q. You stayed with the Exmouth even longer than that? A. I was on the Exmouth about another year.

Q. But how long were you with the American Export Lines, even longer than that, weren't you? A. Oh, yes, I was there until 1953.

Q. Did you sail from New York to Philadelphia on the Exmouth on June 4, 1949? A. I did.

[307] Q. Some time during the night was she in collision? A. Yes, she was.

Q. Where were you at the time? A. I was sleeping in my room.

Q. After the collision did you get up and dress and go on deck? A. Yes. I believe I put on a pair of khaki shorts and I went out on deck.

Q. The weather was warm? A. It was, yes.

Q. What was your duty aboard that ship? A. Taking care of papers and medicine—all kinds of paper work in connection with the administration of the ship, also first aid supplies and hospital.

Q. Do you write up the bridge logbook? A. I have nothing to do with the bridge logbook.

Q. Do you make copies of it afterwards? A. I make copies of a copy.

Q. You mean they make a smooth log after that and then you copy that? A. Well, it all depends on who the second mate is.

Q. You are a sort of a ship's stenographer and a ship's doctor, is that it? A. You might say that.

Q. When you went on deck what is the first thing that [308] you did? A. Probably a lot of little things happened but the first thing I recall is when one of the A. B.'s told me that two men were hurt.

Q. Where did you find them? A. One of them was being carried out of the crew's messroom.

Q. Did you take charge of whatever was done to them and done for them? A. Yes, sir, I did.

Q. What was the first thing that you did for them? A. The fellow who was being carried was placed on the after boat deck, the main deck of the ship, at my direction on a mattress because I did not know whether the ship would stay up or turn over, and I figured that he would be better outside anyway.

Q. Did you give him any medication? A. Yes. I made an examination by flashlight and it did not reveal much but he was in a lot of pain so I gave him a quarter grain of morphine.

Q. And where did you get that? A. From the master's safe.

Q. Was the master up there at the time? A. No, sir.

Q. Did you have the combination of the safe? [309] A. Yes, sir.

Q. What sort of a diagnosis did you make? A. I didn't make any diagnosis. I could only estimate from learning of where he had been when the ship was hit and he must have been hurt in the stomach, internally.

Q. Did you report that to the master? A. Probably not by saying internally, but by saying that the man was badly injured.

Q. You did report it to him, however? A. Yes.

Q. Where was he at the time? A. I believe he was in the chart room or in the doorway between the chart room and the wheelhouse.

Q. This was just a few minutes after the collision—about how long would you say? A. Probably as long as 15 minutes after.

Q. What did the captain say at that time? A. I cannot recall that he said anything.

Q. Did he appear to be normal in every respect? A. I do not believe I had an opportunity to judge at that time.

Q. Did he say anything to you about himself being injured? A. During that day he did.

Q. But at that time he did not say anything at all? [310] A. That is right.

Q. Did he give you any instructions? A. No, sir.

Q. Did you then return to the injured man or men? A. Yes.

Q. What did you then do for him? A. Nothing. I gave him another morphine syrette but I did not do much for him.

Q. How long afterwards was that? A. About a half hour interval between the two injections.

Q. Had the Coast Guard arrived? A. Not at that time, no.

Q. Had they been sent for, if you know? A. I had done what I could to send for them.

Q. What did you do? A. I believe I was in the wheelhouse twice. The first time I went up to throw on the floodlights and I don't know why I was up there the second time, perhaps to look at the deck logbook; and at that time I told the captain that I had two injured men and I wanted to send a wire to shore for Coast Guard assistance and he told me all right, go ahead.

Q. Did you observe his appearance at that time? Did he appear to be normal? A. He was unsteady.

Q. What was his speech like? [311] A. It would be hard to judge—he stammered.

Q. Did he appear like a perfectly normal man in full possession of all of his faculties? A. No, sir.

Q. Did you smell any liquor on him? A. I was not close enough to smell any liquor on him. I imagine that if

anyone could smell at a distance of ten feet he would have to be reeking of it. That was not the case.

Q. He told you to send a message to the Coast Guard? A. He agreed that I could.

Q. It had not been done up to that time? A. No.

Q. What time was this—I mean was it an hour or a half an hour after the collision or two hours after the collision or what? A. It was at least an hour after.

Q. After he said that to you just what did you do? A. I wrote a message and I gave it to the radio operator, and I asked him to send it.

Q. Do you know whether or not he did? A. I checked back twice, once to see if it had gone out and it had not.

Q. Did the radio operator tell you why it had not? A. He had not had written authorization from the master.

[312] Q. You mean he went to the master—he would not take your word for it—he went to the master and could not get authorization?

Mr. Estabrook: I object to that, your Honor. This is not a conversation between the witness and the operator but a conversation between the master and the radio operator.

The Court: Were you there at the time?

The Witness: No, sir.

The Court: Strike it out.

Q. What did the radio operator tell you?

Mr. Estabrook: I object to that.

The Court: Sustained.

Q. What did you say to the radio operator when you went back up and what did he say to you?

Mr. Estabrook: I object to that, your Honor. This is not a question of how quickly we got medical

assistance for Miguel Rivera, that case has been tried and this has nothing to do with the navigation of the vessel.

Q. About how long after that did the Coast Guard come? A. From reading about it and hearing about it I think they came around 4 o'clock in the morning.

Q. You did not know the time at that time? [313] A. No, sir.

Q. When you wrote this message out to the Coast Guard you gave them your position? A. Yes.

Q. You did not know that of your knowledge, did you? A. No.

Q. Where did you get it from? A. I asked some of the mates for it.

Q. Why didn't you ask the captain?

Mr. Estabrook: I object to that as calling for a conclusion.

The Court: Unless the answer involves any information or statements made to this witness through the master I will strike it out.

Mr. Dow: I am asking him why, your Honor. It does not involve any conversation with anybody.

The Witness: It might have been because there were four mates aboard the ship and only one captain, and it was much easier to find a mate.

The Court: We are not interested in knowing what it might have been.

The Witness: I am not sure then exactly why.

Q. Ordinarily would you ask for the position? A. In order to inform somebody, yes.

[314] Q. Well, would you ask for the position given in a radiogram, would you get that from the master ordinarily? A. Yes. On ship's business of that sort the master is the source. It might have been because—no, I will not say.

Q. Did you ever before send out radiograms signed "Master" without consulting the master first as to the content? A. Never without consulting the master.

Q. As to contents? A. That is right.

Q. But this time you did? A. This time I did.

Q. Did you see the master along toward morning—about six or seven o'clock in the morning? A. Yes, sir.

Q. Where did you see him? A. In his office.

Q. Was anyone else present? A. At least two of the mates were present.

Q. Which ones if you can remember? A. I am quite sure the chief mate and the third mate were there.

Q. What was the purpose of this meeting? A. To draw up the deck logbook.

Q. What part did you play in that? A. I am afraid I overplayed in that. I think I called the conference.

The Court: You still have not answered the [315] question.

The Witness: Yes, I took notes.

Q. If I understand you correctly why did you call this meeting? A. Probably because I knew something was going to be written in the logbook and that I was going to have to make copies of it and I wanted to get my end of it done as soon as possible, not knowing when I would get back to New York.

Q. Did you see the master at that time, at this meeting? A. Yes, he was in the office with us.

Q. Will you describe his condition? Was it normal? A. No.

Q. What was his speech like? A. He was hesitant, he was undecisive, he was repetitious and he stammered.

Q. Did you smell any liquor on him at that time? A. I could not honestly say that I did or did not.

Q. You mean that you would not remember at this time? A. I was in the far corner of the room and I might say and I was about as far away from him as it was possible to get in that room.

Q. I think you told us you took notes; is that right? A. Yes, sir.

Q. Who dictated them? A. It was not a one-man dictation, it was more or less talked [316] about and co-related with the assistance of the mates and the master and then assembled.

The Court: Were you instructed to write what you finally wrote? I am trying to find out whether you wrote that which was your own idea or whether you were instructed or directed to write what you did by one or more other people.

The Witness: I was instructed by one or more other people and when I read it back it was approved. I read it to the room in general and it was not turned down, put it that way.

Then the third mate took the logbook, the rough copy, and went over to my room and transcribed it into the deck logbook.

The Court: Did the master say anything when the formulated draft or text of this log entry was made by you; did he say anything about the contents?

Q. Did he offer any suggestions as to what was to go into it? A. I think at that time it was very well settled and there was no disagreement.

Q. You would not remember who at this late date made contributions, that is the captain, the mate or—— A. No, I could not identify any one of the words with any [317] one of the people present.

Q. On the way back up to New York, after you had weighed anchor that afternoon and were northbound—during the evening did you have occasion to see the master again or at any time? A. Yes, off and on during the day.

Q. Where was he and where were you, where did you meet when that happened? A. Well, all over the amidships house, both on the boat deck and on the cabin deck.

Q. And in his room too? A. Yes.

Q. And northbound did you see the captain take anything to drink of an alcoholic nature? A. Yes, I did.

Q. Do you remember what it was? A. I am sure that it was a distilled product.

Q. Did you drink with him? A. I don't remember but I don't think I did. I did not usually drink with the master, but I might have broken the rule on account of the situation that existed.

Mr. Dow: Your witness.

Cross Examination by Mr. Estabrook:

Q. Do you mean by your testimony about the meeting and [318] the writing of the log that the master and the mates were trying to reconstruct the collision? A. That would be a good word to use.

Q. Do you recall testifying before the Coast Guard on June 16, 1949? A. I testified before the Coast Guard.

Q. And do you remember being asked this question:

> "Q. Do you mean to tell me that the general idea was they were not sure how the collision happened and they were trying to reconstruct it? A. No, I would not say they reconstructed it. Like any other major catastrophy, because of the shock all have a different version. We had to make an entry in the log. I had to be ready with typewritten copies."

Is that true? A. I will accept that as my testimony at the time.

Q. Is that true? A. The testimony is true, yes, sir.

Q. You were trying to assemble, you were trying to get different items of information from the different mates so as to have as complete a log entry as was possible; isn't that true? A. Yes.

Q. Did you write down anything or suggest anything yourself that was not suggested by one of the mates? [319] A. I don't remember whether I did or not.

Q. Or suggested by the master? A. I might have refreshed their memory on the medical angle, that is quite conceivable.

Q. But aside from the medical angle did you make any suggestions as to the log outside of the necessity of getting it written so that you could get typed copies out? A. I cannot recall any suggestions.

Q. It was important from your experience as a purser, you knew that people were going to be asking for copies of the logbook? A. I knew that.

Q. And you knew that you would have to get that started as soon as possible? A. Yes.

Q. So you had your own ship's business reasons for getting the log written as soon as possible, isn't that right? A. Right.

Q. When did you do this—after you got the injured men off? A. Yes.

Q. Then you yourself did not suggest that any story be invented to cover the collision, did you? A. I am sure I did not.

Q. At that meeting did the master talk plainly? A. He was never hard to understand.

[320] Q. Did he talk plainly at the meeting?

The Court: When you say "never," do you mean never during this occurrence?

The Witness: During the year or so that we were together, I had never any difficulty understanding him.

Q. Did you have difficulty understanding him at this meeting? A. No, sir, his speech was clear, but the tenor of his speech was not clear.

Q. But he did talk plainly? A. He talked plainly.

Q. Did he talk plainly at other times that you saw him after the collision? A. Yes.

Q. Did he tell you that he had been hurt in the collision? A. I believe I first heard about that at one of the meals during that Sunday in the mess room.

Q. Did you treat him at all? A. I did not.

Mr. Estabrook: No further questions.

(Witness excused.)

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[321] ALBERT BEGELMAN, called as a witness on behalf of the Libelant, having been first duly sworn, testified as follows:

Direct Examination by Mr. Dow:

Q. Where do you live, Captain? A. Great Neck, Long Island.

Q. And what is your business or profession? A. I am a senior pilot for the Maritime Coast Pilots, 17 Battery Place, New York.

Q. For whom does your organization pilot? A. Oh, many steamship lines.

Q. Will you name some? A. Well, the United States Lines, the Moore-McCormack Lines, the French Line, Lloyds', the Chilean Line——

Q. That is enough. Have you ever handled Liberty Ships? A. Yes.

Q. Many? A. A couple of hundred I guess.

Q. Have you ever handled high power 8500-horsepower Victory ships? A. Yes.

Q. About how many? A. I would say the same, a couple of hundred.

Q. Is it fair to say that you have handled almost every type of commercial vessel in the world, deep water ships? [322] A. Yes.

Q. Have you ever handled the Queen Mary and the Queen Elizabeth? A. I have handled the Mary but not the Elizabeth.

Q. And have you ever handled the United States? A. No, sir, I have never handled the United States.

Q. Are you familiar with the waters around the Overfalls Light Vessel at the entrance to Delaware Bay? A. Yes, sir.

Q. When is the last time that you were there? A. Tuesday of this week.

Q. That is the day before yesterday? A. That is correct.

Q. How many times have you been in and out past Overfalls Light? A. Over more than a hundred, easy probably several hundred.

Q. And you have had all these different types of ships that you mentioned in going through there? A. Yes, sir.

Q. With the exception of course of the Queen Mary? A. Yes.

Q. Now in the interests of saving time I show you tide tables for the year 1949, and ask you to find June 5th, about 2 A. M., Eastern Daylight Saving time which would be 1 A. M. [323] Standard time (handing). A. Yes.

Q. I will ask you if you can find us the tide there. A. June 5th, Sunday?

Q. That is right. 1 A. M. Eastern Standard Time if that chart is on Eastern Standard. A. Yes, sir.

Q. What is the stage of the tide? A. An hour before highwater, that is Standard time—I am sorry, that is two hours before highwater.

Q. So would that be on this tidal current chart of the Coast & Geodetic Survey, as are the tide tables, would this chart show "two hours before maximum flood at Delaware Bay entrance"? A. Yes.

Q. And would that correspond? A. It would.

Q. Captain Begelman, I show you now Respondent's Exhibit H which is the chart No. 1219. You did have the tidal current chart. Will you show the Court the significance in the meaning of the tidal current chart for the stage of the tide at what would have been about 2 A. M. Daylight Saving time on June 5th, and also please show

the Court where the lightship is shown on there. A. This would be in relation to right here (indicating). [324] and this means that the tide is flood this way, north and west, at approximately a strength of 1.3 knots.

The Court: Is Overfalls Lightship shown on here?

The Witness: It is right here— this little dot right here is the lightship.

Now in here (indicating) on chart the tide will run approximately north and west, and here (indicating), approximately north northwest. It would be running at an average of 1.1 knots and everything being normal that would be its strength.

Q. There was a very light wind——

The Court: Is that an accepted description of the wind?

Mr. Estabrook: Yes.

Mr. Dow: There was practically no wind and a very light swell.

Q. Will you explain to the Court, based on your judgment and experience and at this stage of the tide, the proper manner to round Overfalls Lightship to go to Philadelphia from New York, let us say for a vessel of the size and type of an 8500-horsepower Victory ship? A. That depends on the conditions around the lightship. Ordinarily in a prudent manner we come in by Five Fathom Shoal light and we steer a course of 270 degrees like so [325] (indicating on chart).

With the tide flowing on the flood you have a tendency, with a ship coming up here (indicating), you have to slow

down here to pick up the pilot and you stop the ship before you get to the lightship or slow speed, and you keep north of the lightship—you get in between the Overfalls buoy and the Five Fathoms Shoal light because the tide could possibly set you down on the lightship.

The Court: You would go this way (indicating on chart)?

The Witness: Yes, your Honor, with a flood tide we keep the lightship on our port hand, like so (indicating) to avoid being pushed over because at this point you must slow the ship down to pick up the pilot, and you always keep the lightship on your port hand between Overfalls buoy and the light ship (indicating on chart).

Q. Will you put a P right there? A. Yes, sir (witness marking).

Q. Now on the same stage of the tide, with a vessel that has just dropped the pilot and is proceeding to New York should she leave the lightship on her port hand or on her starboard hand and why? A. Mr. Dow, it is prudent to keep on your own side of the [326] channel coming down, coming down this way (indicating) to keep on the starboard because ships coming up would want to keep on their starboard side of the channel and certainly you would not want to get involved with any vessels coming up in this manner (indicating on chart).

I would prefer to keep the light vessel this way (indicating) and go up this way (indicating) and then make the Five Fathom Shoal Light.

Also, secondly, why get fouled up with all of the ships on the other side, you would probably get in a collision.

Q. You mean that leaving the lightship on your starboard hand the tide would be pushing you north in the path

of any oncoming traffic? A. Exactly, and also you are always in danger of passing or crossing the other vessel's path.

Q. That is the way you would do it? A. That is the regular standard pilot's practice.

Mr. Dow: No further questions.

Cross-Examination by Mr. Estabrook:

Q. Captain, you have been showing this on a current chart. A. Yes.

Q. And that is two hours before maximum flood at [327] Delaware Bay entrance? A. Yes.

Q. Is that two hours before highwater or two hours before maximum flood tide? A. Well, now, I happen to have a current table with me so I will show you.

Q. What does the current table show?

Mr. Dow: That table is for 1949, Captain?

The Witness: Yes, sir.

Q. On June 5th at Overfalls Lightship. A. At Delaware Bay entrance, Overfalls Lightship, June 5th, at 1:17 Standard time it is maximum flood. If anything she was flooding stronger. She would be going about 2.2 up to 2.3 knots.

The tide at this stage has increased.

Q. You mean the current? A. The current I should say.

You can see it here, sir (indicating), where it says maximum flood, Sunday, June 5th, 01.17, Overfalls Lightship—2.2 to 2.3 knots—it has increased.

Q. And it is more dangerous then to go north of the lightship because of being pushed over on South Shoals?

A. No, sir, it is more dangerous to go south and be pushed onto the lightship.

As a matter of fact the Coast Guard has for many [328] years issued instructions to keep clear of the lightship. Why go south of the lightship with that tide? With a slow speed on the ship and with the tide at that stage making two and a half knots it can easily push you right onto the lightship and if you go north it would push you over into that other water.

You must be prudent enough to keep away from the lightship.

Q. Isn't it true, Captain, that vessels coming down on a maximum flood, that is out of the river and a vessel coming up with a maximum flood, south of the lightship, it would not be prudent for the vessel going to sea to go north of the lightship? A. No, sir.

Q. Why? A. Because you are crossing the other vessel's bow.

Q. But you can keep clear of the other vessel? A. But you are creating a crossing situation.

Q. At two miles? A. With the tide flooding like that, the other vessel presumably had stopped to pick up the pilot. You are laying yourself wide open if you do something like that.

The other vessel has stopped and he is coming in to pick up a pilot. If you cross his bow he cannot [329] maneuver as quickly as you can because you have full control with your speed.

Secondly, you are stopping to drop your pilot.

Q. After you have dropped your pilot— A. I would say within a radius of a half mile 99 times out of a hundred you will find them circulating in here (indicating).

The Court: What is this cross here, what does that represent, Mr. Estabrook?

Mr. Estabrook: Your Honor, that is where Captain Eklund believed he saw the pilot vessel when he first noticed it when coming by the lightship.

The Witness: I might add that sometimes, if there are a number of ships coming down, in order to alleviate conditions where the ships might pile up the pilot boat might go a little to the north to take pilots off more rapidly so that they don't get fouled up around the lightship.

The Court: Assuming that the Exmount had been anchored before proceeding at a point marked with an X here and with an A, and then proceeded toward the pilot ship and was passing the Overfalls Light Vessel, was it good seamanship to cross on this side, that is to cross so that it would have the lightship on its [330] starboard side?

The Witness: Good heavens, no, why make a maneuver like that? He also turned around and he makes a 180-degree turn. He comes up here (indicating), gets the lightship on this side (indicating) and the tide is pushing him into the lightship.

He is heading up here (indicating), clear of the lightship in this case, and he has all the room in the world with the tide taking him up that way.

Q. You think it is a mistake then for a vessel anchored where the letter A appears on Exmount Exhibit H, to try and pass the lightship to port rather than to starboard? A. It is a very good idea to pass the lightship on his port.

Q. Leave the lightship on his starboard hand—that that is a clear mistake? A. I would say it is certainly poor judgment.

Q. If you were on a ship in the vicinity of that light vessel and you saw another vessel doing that would you consider the other vessel was navigating properly? A. No, sir, I would not.

Q. Would you take any precautions in relation to the other vessel? A. Well, that depends on this stage of the tide—coming [331] this way (indicating) with a maximum flood, he has the tide under his stern.

Let me say this: If you are all the way over here from him (indicating) you certainly have lots of time—remember he has much more maneuverability than you have.

Q. Suppose you are down here at the letters HB at the time that you see another vessel where the letters EI are and just leaving the lightship on E's starboard hand and showing you a green light.

Mr. Dow: I must object, your Honor. If Mr. Estabrook is going to attempt to recreate the situation of this collision then I suggest that he give the witness the information as to which ship is the Liberty ship and which ship is the Victory ship and also their respective positions and put it in the form of a hypothetical question.

The Court: You do not dispute the accuracy of the statements made, do you?

Mr. Dow: I suggest that it be a hypothetical question.

The Court: Well, apparently Mr. Estabrook is putting in his question, reciting some of his recollection of the testimony in the case.

I will have the question repeated.

[332] Q. (Question repeated.) A. No, and I will tell you why.

* * *

Q. He saw a light at the position E1 indicating a vessel was coming in a westerly direction and he is showing you a green light? A. Right.

Q. Now, will you state the courses relating to the other vessel? A. And I am on this ship here (indicating)?

Q. Yes, about a mile away. A. I would go to starboard.

Q. Where? A. Well, I would assume——

Q. When would you go to starboard? A. It depends on how far away he is.

Q. One mile away? A. I would not have to make too much of a change in course.

I cannot go to starboard too much. He is the burdened vessel, I am the privileged one.

[333] Q. And how long would you stand on before you did anything definite? A. Well, sir, that is a difficult question to answer. A privileged vessel is always in a difficult position. There is only one rule open to him, he can not either go to port or to starboard because it is incumbent upon him to keep his course and speed. The other fellow on the other hand, the burdened vessel, he can make all sorts of maneuvers.

I think the only one course—I think I would keep my course and speed.

Q. Could you keep your course and speed through the shellplating of the other vessel? A. Of course not.

Mr. Dow: I object to that, your Honor, because that calls for a legal conclusion.

The Witness: Of course, I would not do anything like that.

Q. You would take some action, wouldn't you, Mr. Begelman? A. It all depends on what the other vessel is doing.

Q. Well, suppose the other vessel does nothing but continues on a steady course and speed and on a steady bearing? A. I would blow him one blast.

[334] Q. And then what would you do? A. Maintain my course and speed.

Q. How long? A. Until the risk of collision I suppose but then again that question——

Mr. Dow: Will you give him the other ship's signal?

The Witness: Distance is hard to determine and first of all, with that tide against him—I could not maneuver as rapidly as the other fellow.

Q. So if you could not maneuver as rapidly or as quickly you would have to indicate a swing? A. Not necessarily, sir, for this reason—I have only one course open to me and that is to maintain my course and speed—it is my duty to do so.

Q. Can you do so and ram the other vessel? A. Well, no, of course not.

Q. So you have to take some precautionary action, do you not, under the rules; do not the preventative rules require you, even as a privileged vessel, to take action when risk of collision is imminent? A. Sir, when I see a green light down here (indicating) whether five miles away or a half a mile away the risk of collision is imminent.

Q. He is a crossing vessel? [335] A. Yes, I can do nothing else but keep my course and speed.

Q. For how long? A. Now that is a very difficult question to answer. The risk of collision sometimes might be dangerous at two miles or at 50 feet.

I have passed vessels 50 feet away without any risk of collision, with each vessel making a speed of 18 knots, and with no risk of collision involved because——

The Court: They were coming head on?

The Witness: They were coming head on.

Q. Mr. Begelman, what does one blast mean in international waters? A. I am directing my course to starboard.

Q. And it is a violation of the rules if you do not change your course to starboard? A. If you change your rudder five degrees you already signify you have changed your course. You must then give one blast.

The Court: You said a little while ago I think under the conditions prevailing in the more or less hypothetical question presented by Mr. Estabrook that you would blow one blast and maintain your course and speed.

Doesn't one blast mean a deviation in the course?

[336] The Witness: No, sir, in inland waters it is different. In inland waters it is the duty of the privileged vessel, if he wishes to, to blow one blast signifying his intention to maintain course and speed.

The Court: Aren't these waters international waters?

The Witness: No, sir, your inland line runs from Cape May buoy (indicating) over here to Overfalls (indicating), and then over to Cape Henlopen and unless you cross this line (indicating on chart) you are in inland waters right here.

Mr. Estabrook: Let me correct that, Captain. Doesn't it run to the northern tip of Cape Henlopen (indicating)?

The Witness: I think it is the southern side.

Q. Captain Macris testified that he thought he was in international waters at the time he blew the one blast.

Mr. Dow: At the time that he dropped the pilot.

The Witness. According to this chart he was in inland waters.

Q. We were discussing Rule 29 which I believe is the same in both inland and international rules—the so-called general precautionary rule and I read now from Knight's wherein the rule states:

[337] "Nothing in these rules shall exonerate any vessel or the owner of master or crew thereof from the consequence of any neglect to carry lights or signals or of any neglect to keep a proper lookout or of the neglect of any precaution which may be required by the ordinary practice of seamen or by the special circumstances of the case."

That is correct, isn't it? A. Yes.

Q. Well, under that rule is it not obligatory for a privileged vessel to take emergency action, either changing course or speed or both if the burdened vessel does not give way but continues on her course and speed? A. Well, that is a very difficult question to answer. In these circumstances it is the burdened vessel that created the situation.

The Court: What circumstances?

The Witness: This particular vessel here (indicating). He is coming up this way (indicating) and by doing so he created a situation where the risk of collision was imminent. He created a situation which is always contrary to the rule and by so doing he deliberately violated the rule.

The Court: The question now is in spite of the [338] fact is it the privileged vessel that is obliged

to change its course or do anything else which may be necessary to avoid collision?

The Witness: Of course it is always, in a situation like that, up to the other vessel to do whatever he can and he should do it.

Q. He is not entitled, just because the burdened vessel has violated the rules, to ram it; is that correct?

Mr. Dow: I object to that question in the way it is put, your Honor. If Mr. Estabrook means that no matter what the burdened vessel does that the privileged vessel is necessarily obliged to avoid collision or share the blame. I think it is an improper question.

He must do something to try and avoid it but the mere fact that he is still unable to does not make him liable for the collision.

The Court: I shall undertake, without ruling on your objection, to state the question in the way I believe to be the manner intended by Mr. Estabrook.

The Court: Is the master of the privileged vessel required to make every effort to avoid a collision even if he is the privileged vessel?

The Witness: Only when danger of collision is [339] imminent but that is true of the other vessel as well, sir.

Q. Assume, Captain, that you are the master of a Liberty vessel loaded with about 5,000 tons of cargo and it is a dark night.

At a distance of about one mile you see the masthead light and the green light, the running light and the range light, indicating that you are coming on approximately a course of 124 and the other vessel is approximately 260 degrees.

The other vessel bears about broad on your port bow and the bearing remains constant.

When, Captain, in your opinion, as the vessels approach is it incumbent on the privileged vessel to change course or speed?

Mr. Dow: I suggest you put the whistle signals in there.

The Court: And speed.

Q. Assume that the Liberty vessel is doing approximately 9 knots——

Mr. Dow: What whistle signals were blown?

The Court: Yes.

The Witness: And I am on the Liberty ship?

Q. Yes, how close would you get to the other vessel [340] before you took some action, either change your course or speed or both? A. That is a very difficult question again. On a dark night, lights being what they are it is a little difficult to judge your distance.

My first procedure would be to give the other vessel one blast of the whistle.

Q. Assuming no answer? A. Assume no answer and that is then a crossing vessel and that is contributing to the situation and he is putting me in a very tough spot.

The only thing you can do then is to blow the danger signal immediately.

Mr. Estabrook: Thank you, Captain.

Redirect Examination by Mr. Dow:

Q. Supposing, Captain, that immediately after—I will put a few more factors into that hypothetical question, factors which I believe are in this case, and I would like to have you then answer it. A. Yes, sir.

Q. Supposing that you are a little over a mile away and you blew one blast. You were not sure that the other fellow heard you so you blew another blast and in response [341] you got two blasts.

What would you do then, Captain?

The Court: The other conditions I take it being the same as outlined by Mr. Estabrook?

Mr. Dow: That is correct, sir.

The Witness: The fact that the other ship is the burdened vessel and blew me two blasts, in my opinion it is an intent to violate the rule.

Q. And what would you do as captain of the Liberty ship? A. I would then blow the danger signal.

Q. And what would you do with your helm, would you stop her or—— A. I would stop her if I could until such time as we agreed upon the signals passed.

Q. What helm orders would you give? A. I would go hard right, backing my ship to keep out of his way.

Mr. Dow: Thank you.

(Witness excused.)

* * *

[342] Mr. Estabrook: May it be stipulated, Mr. Dow, that the current table Atlantic Coast, 1949, shows for Sunday, June 5th, maximum flood course at 1:17 A. M., Eastern Standard time, or 2:17 Daylight Saving time; current at 1.6 knots which according to the current chart requires a correction factor of seven-tenths to be used in connection with the current velocity shown on Hellenic Beach Exhibit 5?

Mr. Dow: If that is satisfactory with Captain Begelman. There is not much difference there. What he says I will stipulate.

The libelant rests, your Honor.

Mr. Estabrook: I offer in evidence the engine-room [343] bell book of the SS Exmouth.

Mr. Dow: I object to it being offered in evidence unless the engineer is produced and explains what he did, how he did it and why he did it.

* * *

The Court: I am obliged to sustain the objection, Mr. Estabrook.

Now have you anything else, Mr. Dow?

Mr. Dow: No, sir.

[344] Mr. Estabrook: Your Honor, I would like to call Captain Eklund to the stand.

RAGNAR F. EKLUND, recalled as a witness by the Respondent, testified as follows:

Direct Examination by Mr. Estabrook:

Q. Captain, I show you a book and I ask you what it is (handing)? A. That is the engine-room bell book.

The Court: Of what ship?

The Witness: Of the SS Exmouth.

Q. Is that one of the official records of the American Export Lines, owner of the Exmouth? A. Yes, it is.

Q. Where is that book kept? A. That book is kept in the engine-room.

Q. By what officer? A. By the engineer on watch.

Q. And what facts is that book, in accordance with the regulations of the American Export Lines, supposed to record? A. All of the bells to the engine-room according to the watch.

The Court: You do not need any more than that in order to offer it, do you, Mr. Estabrook?

[345] Mr. Estabrook: I renew my offer of the bell book, your Honor.

Mr. Dow: I renew my objection unless the man is produced during the period in question.

The Court: Your objection is overruled. I shall allow it in evidence.

(Bell book of SS Exmouth (engine-room) received and marked Respondent's Exhibit P.)

Q. Does Respondent's Exhibit D correctly state the meaning of the symbols contained in the engine-room bell book?

The Court: The paper you now hold in your hand.

Q. Does that correctly state the meaning of the symbols contained in the bell book which has just been marked Respondent's Exhibit P? A. Yes, sir.

Mr. Dow: I will stipulate that.

Mr. Estabrook: This is an international system of signals, your Honor, which was testified to by the assistant engineer of the Hellenic Beach and we use the same system.

The Court: Very well. Is there anything else?

Mr. Estabrook: No more questions of this witness.

Mr. Dow: No questions.

(Witness excused.)

* * *

[346A] (Adjourned to Monday, January 10, 1954, at 10:30 o'clock A. M.)

[347] HELLENIC LINES, LTD., owner of
SS HELLENIC BEACH,

vs.

SS EXMOUTH AND AMERICAN EXPORT
LINES, INC.

AMERICAN EXPORT LINES, as owner of
SS EXMOUTH,

vs.

SS HELLENIC BEACH AND HELLENIC
LINES, LTD.

Brooklyn, New York,
January 10, 1954.

Appearances:

(As heretofore noted.)

TRIAL CONTINUED

(By agreement between counsel and with the consent of the Court an adjournment was taken until 2 o'clock P. M.)

[348] AFTERNOON SESSION.

PAUL S. ZITO, called as a witness on behalf of the Respondent, having been first duly sworn, testified as follows:

Direct Examination by Mr. Estabrook:

Q. Are you a physician and surgeon duly licensed to practice medicine in the States of New York and New Jersey? A. Yes, sir, I am.

Q. And in June of 1949, were you a physician in the employ of the United States Public Health Service stationed at the Marine Hospital at Stapleton, Staten Island? A. I was.

Q. And what was your position there, Doctor? A. I was senior resident surgeon.

Q. What are your medical and surgical qualifications, Doctor? A. I graduated from Long Island School of Medicine in 1942.

I interned at the Brooklyn Hospital, Brooklyn, New York.

I was a surgeon resident at the Marine Hospital for three years.

I was at the post graduate school, University of Pennsylvania, from 1949 to 1950, and I was assistant chief [349] of the surgical service at the United States Marine Hospital on Staten Island from 1950 to 1951.

I am a Diplomate of the American Board of Surgery.

I am a fellow of the American College of Surgeons and of the International College of Surgeons.

I am also——

Q. I think that will suffice, Doctor. Do you now specialize in any particular branch of the field of medicine? A. I do.

Q. And what is that? A. General Surgery.

The Court: Does that mean internal general surgery, Doctor?

The Witness: General surgery.

Q. I show you this batch of papers, Doctor, which has been marked as one exhibit, Respondent's Exhibit L in evidence, and I ask you if you are the physician who signed the final diagnosis of Captain Eklund (handling). A. Yes, sir, I was.

Q. What was your final diagnosis, Doctor? A. Concussion of the brain and anxiety state.

Q. Is that diagnosis in your opinion correct, sir? A. Yes, sir, it is.

Q. What are your reasons for that statement? A. My reasons were based on the history that came from the [350] patient and the findings.

The history was given that while aboard ship, during a fog, the ship was involved in a collision with another ship and the patient was thrown against the bulkhead striking his head and the right side of his body.

He states that he was unconscious for about a half a minute and subsequently dizzy and confused.

On that history alone I was able to make a diagnosis of concussion of the brain.

Q. And there are some findings that substantiate your diagnosis, are there, Doctor? A. He also gave a history of severe headaches, continuing confusion and a state of daze, difficulty in walking.

I did not examine this patient on admission but on the examination which was done on admission, from the record he did give a finding of weakness of one side of his body.

Q. Were any examinations made during the course of his hospitalization? A. Yes, this patient was examined by many doctors on the staff at the Marine Hospital.

He was examined in the admitting office and he was examined by the admitting physician.

He was examined by the intern on the neurological [351] service and he was subsequently examined by the senior physician of the neurological service.

He was seen in surgical consultation by myself and a surgical resident.

He was also examined by a neuro-surgical consultant. That was on the 20th of June.

He also was examined daily by me while he was in the surgical service from the 21st of June, 1949, until his discharge on the 24th of June.

Q. Doctor, there has been a suggestion that the patient was not suffering from a concussion of the brain but rather from alcoholism.

Have you studied Exmouth's Exhibit L to refresh your recollection from your own observation of the patient? A. I have studied this.

Q. And after that and from your own observation of the patient as you recall it, can you state whether or not there is any such history? A. There is no history given by the patient or by any of the physicians that examined this patient, that this was a case of alcoholism.

Q. Do you have frequent alcoholism at the hospital, Doctor? A. Yes, sir, and we have a routine treatment depending upon [352] the state of alcoholism, that is whether the patient was in a comba or acute alcoholism and there is a treatment for chronic alcoholism.

Q. And from your experience at the time you were at the Marine Hospital in Staten Island, did you have frequent alcoholic cases? A. Oh yes, very much so. Dealing with merchant seamen naturally.

Q. Is there any reference in the record dealing with alcoholism or with alcohol treatment at all in this case? A. No, sir.

The Court: Your diagnosis was anxiety state —that is one of them.

The Witness: Yes.

The Court: Based on your personal observations or findings of your own?

The Witness: Yes.

The Court: What were they?

The Witness: The patient on examination was very tense and apprehensive and with the suggestion of psychotherapy and sedation he gradually improved.

The Court: Do you specialize at the present time, in your practice, in neurosurgery?

The Witness: I am not an expert in neurosurgery, [353] although I have performed many neurosurgical procedures.

Mr. Estabrook: I have no further questions.

Cross-Examination by Mr. Dow:

Q. You signed that diagnosis, but did you draw it—in other words, is that your dictation? A. Yes.

Q. That is the full page, the diagnosis shown there (indicating)? A. Yes, sir.

Q. And as a surgeon and undoubtedly a very competent one, did you feel that you were fully competent to make a diagnosis of this man from what you found there? A. I believe so.

Q. Don't you believe that if a man is thrown 30 feet, as I think you said he was thrown, in that report there that there would be some evidence of a crack on the head from a steel bulkhead? A. The injury was sustained—I dictated here the 8th of June but I was told that actually the injury was sustained about June 5th.

The patient was admitted seven days later to the Marine Hospital and I did not see him until seven days following that. Now it is quite possible that 14 days [354] following a head injury that there will be no external signs apparent.

Q. You mean he did not enter the hospital until 14 days after the injury occurred? A. No, sir, I did not say that.

I stated that I did not examine this patient until 14 days after the injury. He was admitted to the hospital on June 13, 1949.

The Court: The accident having occurred on June 5th?

Mr. Estabrook: That is correct, sir.

Mr Dow: Has it been your experience, Doctor, that people suffering from concussion walk around and are ambulatory for eight days before they enter a hospital and then, thereafter, you can find no external evidence of it—has that been your experience?

The Witness: It is possible for a patient to receive a concussion of the brain with no immediate effects other than the initial loss of consciousness. And then at a later date, a day, a week, a month perhaps, symptoms referrable to concussion may appear.

Q. That has been your experience? A. Yes, sir.

Q. Tell me, Doctor, is there any external or objective [355] findings of any head injury contained within the 27 pages of that report and if so will you kindly point them out to me? A. I stated that the history of the head injury and brain concussion was obtained from the history given by the patient of a loss of consciousness; in other words, a state of unconsciousness.

Q. Doctor, the only evidence then in that entire report of any injury to the patient's head is entirely the patient's own statement that he was hit in the head; isn't that correct? A. No, sir. I would like to add something to my previous statement.

On the physical examination there is an abrasion noticed on the occiput.

Q. On the what, Doctor? A. An abrasion noticed on the occiput, which is the back of the head right here (wit-

ness demonstrating). That is one of the specific findings.

Q. Doctor, didn't the patient complain——

The Court: Just a minute. Has the witness finished?

The Witness: I am trying to summarize some of the physical findings.

I have given the history and now I wish to give [356] some of the physical findings.

There is also a finding of decreased sensation obtained on the left side of the face and also the left foot. There was a discrepancy in the knee reflexes, the reflexes being present on the right and marked decreased on the left.

There is also a positive Romberg test which is a test for balance, with the eyes closed.

This patient was unable to stand erect in other words with his eyes closed and he also had a defect in turning his hands over rapidly like this (demonstrating), and also he had a defect in pointing his finger to his nose or to a finger of the other hand, with his eyes closed.

Those are all part of the objective neurological findings.

Q. Aren't every one of those findings, Doctor, usually very similar in a case of a man who has been drinking? A. I disagree with that. There may be some of these symptoms present in cases who had been drinking or rather suffering from acute alcoholism but it does not necessarily state that this man is suffering from acute alcoholism.

We do not usually get localized signs in acute alcoholism whereas we did have localized signs in this [357] patient.

Q. Don't you think that the head injury would be objectively more severe if the patient fell in the manner

in which he described, Doctor? A. Not necessarily. A patient may receive a severe head injury with little objective findings and marked subjective symptoms.

Of course the reverse is also true.

Q. Do you find, Doctor, that patients when they come in, who have been heavy drinkers, usually give the hospital a history of alcoholism? A. It was our experience at the Marine Hospital with merchant seamen and if so they were placed on a very strict therapy for acute alcoholism.

Q. If there was a mild head injury following which the patient remained in command of his ship, went back to New York with it and spent over a week in New York before he entered the hospital, what do you suppose would cause him to enter the hospital as it shows there on the admittance report, in a condition where he would attempt to make himself vomit as opposed to projectile vomiting over which he normally would have no control.

What would cause him to do that? A. I don't believe I could answer that question.

[358] Q. Isn't it the common reaction of a person who has been hit on the head to wish to retain the content of his stomach rather than to deliberately and voluntarily lose it—or have you had experience with this, Doctor? A. I am sorry, but I don't quite understand the question.

Q. You saw from that record that when the patient entered the hospital he stuck his finger down his throat and tried to make himself vomit; you saw that there, did you not? A. No, sir, I didn't notice that.

Q. That is shown in his condition immediately after his admittance.

The Court: I suppose it would be well to have your question state it is so assumed.

The Witness: I see that now. Now will you repeat your question?

Q. Yes, isn't that quite the contrary to the conduct of a man who comes in with a head injury? A. That note was made at 3 A. M. and the patient had received medication at 1 A. M., that is a sedative.

Under sedation I don't know whether we can explain all of the acts or reactions of a patient.

Q. What sedation did the patient have at 1 o'clock? A. He got 4 c.c.'s of paraldehyde, intramuscularly.

Q. When you give a medicine for sedation purposes intra- [359] muscularly or intervascularly you do that to avoid pain in the stomach, don't you? A. If the patient is unable to retain medication we may give it by other than mouth or possibly to have a more effective result from the medication, then it may be given by route other than by mouth.

Q. So that the patient had nothing in his stomach in the way of medicine at the time that he attempted to make himself vomit, did he? A. That is correct.

Q. And isn't that a very common reaction of an alcoholic, to wish to empty his stomach? A. I do not believe that is restricted only to alcoholics.

Q. I did not mean to indicate that it was, Doctor. But however isn't that a very common thing for an alcoholic to wish to do? A. Perhaps.

Q. And isn't it on the contrary a very rare thing for a head injury or a person who has a head which has been injured, to wish to do that? A. I don't believe I can answer that question.

Q. Now the physical examination where you saw certain differences in the reflexes, which are referred to, isn't that the same day as the examination by Dr. Somberg where [360] he found no change? A. You are not referring personally to me, are you, because I stated I had not seen this patient on admittance.

The findings on the physical examination were those found on the admission of the patient, namely, on 6/13/49.

Dr. Somberg's examination I believe was on 6/20/49 which would be seven days later.

Q. All of these defects had disappeared by then, hadn't they? A. May I repeat the positive findings. I disagree with your statement.

The Court: Then say no, if you disagree.

The Witness: They did not.

Q. There were a few remaining? A. Yes.

Q. But on the whole the recovery was quite good, was it not? A. Not at that time.

Q. It was subsequently good, before he left the hospital? A. They were improved.

Q. And isn't it true, Doctor, that in alcoholic cases, if this condition was caused by alcohol, it clears up a whole lot quicker than when it is caused by trauma or a head injury or some sort? A. It may be.

[361] Isn't it true that codeine normally depresses the respiratory centers which are also depressed in the case of a head injury? A. I would like to correct that.

The respiratory centers may be depressed in a head injury but not necessarily always.

Secondly, codeine, in small doses usually has little or no effect on respiratory centers, that is as to depression—remember, I said in small doses.

The use of morphine is not indicated in head injuries.

Q. Are you familiar with this book of the American College of Surgeons of 1954, the article entitled "Early Care of Acute Soft Tissue Injuries"? A. Yes, sir, I believe I am.

Paul S. Zito—For Respondent—Cross

Q. I would like to read to you a paragraph on page 20 of this book and then ask you if you agree with it.

This is under the chapter entitled "Management of Acute Head Injuries, Paragraph 6":

> "Control of restlessness: Patients who are restless and confused constitute a definite nursing problem and sedative medication may be necessary. Paraldehyde administered directly or sodium luminol administered intramuscularly or intravenously are satisfactory.
>
> [362] "The latter are particularly indicated for control of convulsions. Morphine and codeine are contraindicated because of depression of respiration area, edema of the larynx and alteration of the pupils."

Do you agree with that? A. Wholeheartedly and it seem paradoxical but I would like to repeat what I said before, that refers to a patient in acute restlessness.

Codeine was not given to this patient for his restlessness. We have a standard order here on our order sheet for codeine, grain 1/2 and aspirin grain 5 for headache or pain. That was not administered for restlessness.

Also that paragraph in that very excellent brochure refers to acute head injuries, but this patient could not be termed an acute head injury, having been ambulatory and was being seen a week or so after his original injury.

Q. Do you consider that phenobarbital and 1½ grains of seconal are too high in a case of a head injury? A. No, sir, I do not.

Q. Excuse me. Did you consider that I meant when given orally? A. The same answer. If you were to give

any doses less than that for restlessness or any other acute state I do not [363] believe they would be effective.

I think the dosage as stated and given was accurate and correct.

The Court: What was the dose of seconal, 1½ grains?

The Witness: Yes, sir, I believe that was what was quoted.

Q. Would it be reasonable to suppose, Doctor, that a man who had received a head injury would also seek prompt hospitalization? A. If he had symptoms I would say yes.

Q. Well, he did have symptoms that he told you about? A. Yes.

Q. Might it not be just as reasonable to suppose that if the man did drink more than he should that the head injury or the alleged head injury was a shield for treatment of something else, if that were true? A. I don't believe we can dispute the history of the head injury here, and as to whether that is true or not, I cannot answer that accurately. It may or may not be.

Q. Isn't it reasonable to suppose, Doctor, that the tremors accompanying the diagnosis would be more likely from alcoholism than from a head injury, particularly the intention tremors? [364] A. Intention tremors can be caused by other conditions, other than alcoholism.

Q. I quite agree with you but you are not answering my question, Doctor.

Isn't it more likely that that type of tremor would result from alcoholism than from a trauma of the head or have you had sufficient experience in that sort of thing to

give an opinion? A. I would rather not give an opinion on that question.

Q. Isn't it true, Doctor, that the fact that the patient responded to bed rest, nicotinic acid and sedation factor is more likely to accompany alcoholism than a head injury and again, Doctor, if you feel you would rather not answer that, please say so? A. I believe that the medication was for the patient's anxiety state and not for the head injury.

The patient was anxious, tense and nervous and that therapy was directed for the correcting of the anxiety state.

Q. Do you usually give the type of therapy you did give so soon after a head injury or do you more often give it to cases of alcoholism? A. What therapy are you referring to, sir?

Q. The psychotherapy. [365] A. That type of therapy can be given to any patient for any type of condition and most types of medical therapy today are accompanied by some sort of a psychotherapy, even for organic conditions.

To elaborate on that point, we have many patients who are depressed or nervous with many types of medical conditions and psychotherapy is part of the treatment of that patient.

Q. Do you usually give it so soon after admittance for a head injury as opposed to alcholism? A. I don't believe there is any distinction that can be made in therapy being given for acute alcholism and for acute head injury.

Q. Do you consider yourself an expert on that subject, Doctor? A. Not on alcholism, no, sir, but on head injuries I do.

Mr. Dow: That is all.

Mr. Estabrook: I have no further questions.

(Witness excused.)

[366] LAURENT FEINIER, called as a witness on behalf of the Respondent, having been first duly sworn, testified as follows:

Direct Examination by Mr. Estabrook:

Q. Doctor, you are a duly licensed physician practicing medicine according to the laws of the State of New York? A. I am.

Q. Have you specialized in any field of the practice of medicine? A. Yes, for the past 36 years I have confined my practice entirely to neurology and psychiatry.

Q. Will you state your qualifications for the record, Doctor? A. I am a Light Fellow of the American Psychiatric Association, a member of the American Neurological Society and a senior member of the New York Neurological Society.

I am a Diplomate in Psychiatry and Neurology.

For over a quarter of a century I have taught neurology and for many, many years held the position of the clinical member of the Department of Nuerology and Psychiatry at the Long Island College of Medicine.

I am a consulting neuropsychiatrist at St. John's Hospital, and also at the Long Island College Hospital, at St. Giles Hospital, and I am a neuropsychiatrist [367] at the Cumberland Street Hospital and neuropsychiatrist at the Norwegian Hospital.

I am consulting neuropsychiatrist at the South Side Hospital at Bayshore, Long Island, and at the Yonkers Hospital.

I am attending neuropsychiatrist at St. Peter's Hospital and at the Long Island College Hospital.

I have been on the staff of the New York Neurological Institute for 36 years and at sometimes during that interval

have held every staff position from resident to full attending neurologist.

Q. Doctor, have you at my request examined Exmouth Exhibit L, which is in evidence here, the hospital record of the Marine Hospital, covering the hospitalization of Captain Eklund? A. I have.

Q. Have you observed the final diagnosis of concussion of the brain and anxiety state? A. I have.

Q. Are there sufficient facts stated in the record for you with reasonable certainty to state whether that final diagnosis is correct? A. It is.

Q. Or rather whether they are correct? A. They are.

[368] Q. They are *correct*, Doctor? A. They are.

Q. Will you state your reasons for that statement? A. As to the cerebral concussion, the clinical picture is classical. It is a perfect picture of a cerebral concussion.

To explain that, first there is a trauma and then a loss of consciousness. Then there follows headaches, confusion, dizziness—it is a textbook ideal picture of a cerebral concussion.

As to the second diagnosis, that of anxiety state, that also has every support. The patient was apprehensive and trembling. Again that is a classical picture of an anxiety state.

Q. Doctor, there has been some suggestion here of alcoholism. Can you state with reasonable certainty whether the findings in that record are indicative of alcoholism? A. I found none.

Q. Did you find any objective signs of concussion in that record? A. Yes, sir, I did.

Q. What did you find? A. The patent had a positive Romberg. He had inequality in the knee reflexes. One examiner found no adjustment in the knee reflexes bilaterally and that is a very important finding.

Those were the main objective findings as I recall.

[369] Mr. Estabrook: I have no further questions.

Mr. Dow: No questions.

(Witness excused.)

Mr. Estabrook: Your Honor, the American Export Lines rests.

The Court: Do both sides rest?

Mr. Dow: Your Honor, I would prefer to put Dr. Balensweig on to defend his own point of view, if I may.

The Court: Call him.

IRVIN BALENSWEIG, recalled as a witness on behalf of the Libelant, further testified as follows:

Examination by Mr. Dow:

Q. You have heard the testimony of the two previous witnesses, Doctor? A. Yes, sir.

Q. And I notice that you have been taking some notes.

Rather than to take the time of this Court to attempt a long cross-examination, I would prefer to have you state to the Court, in your own words and in your way, the views you may have obtained of the testimony of the two prior witnesses and the testimony that you gave last.

I hand you Respondent's Exhibit L, Doctor, and [370] ask you to explain to the Court why in your opinion the objective findings, the trauma, the loss of consciousness, the concussion were given to the hospital by the patient or whether they were found objectively.

Mr. Estabrook: I object to that question.

The Court: Why they were given?

Mr. Dow: Whether they were, your Honor.

The Court: You want to find out whether the record in evidence indicates the source of the information which we call the history of the case?

Mr. Dow: Yes, sir.

The Court: Well, go ahead.

Q. Doctor, where did the objective findings, from a reading of that report, come from, speaking of trauma, loss of consciousness, concussion—does it come from a recitation by the patient on admission or by objective findings by doctors? A. May I have a few moments to read this?

The Court: Surely.

The Witness: Now is there a question before me?

Q. No, sir. Doctor, from an examination of the records that you have before you would you suppose that the anxiety status or do you have an opinion as to whether the anxiety status came from, if there was one there and why?

[371] Mr. Estabrook: Oh, I must object to that, your Honor. This witness is not a psychiatrist, he is an orthopedist.

The Court: I think you testified previously, Doctor, that you specialized in neurosurgery, did you?

The Witness: No, your Honor, orthopedic surgery, but I am a member of the committee on trauma of the Association, and I have been associated with the care of trauma ever since 1916 or 1917.

The Court: I am afraid I shall have to sustain the objection, Mr. Dow.

Q. Doctor, in the almost 40 years that you have been involved with trauma, do you see anything in that 27 page report that leads you to believe that the anxiety status given in the summary on the outside there (indicating) is a result of what is to be found in the report inside?

The Court: I do not think the doctor has testified that he has had any experience in the field of neurology at all. However, I will give his testimony of course such consideration that it deserves.

The Witness: Dr. Zito testified this man had an abrasion on the occiput when he saw him.

There is nothing in the record about that.

The Court: There is nothing in that report?

[372] The Witness: I find nothing. I have looked through it several times to seek information about a direct blow to the head or a laceration of the occiput and I cannot find it.

Secondly, I do not find any information in this report directly signed by Dr. Zito. I see his signature on the narrative summary and I am trying to compare that with his signature found under date of June 24, 1949, on page 12, under a similar signature "Discharged, two weeks convalescence."

The Court: Mindful of the fact that not less than seven or eight days elapsed between the date of the accident, and the date of admission of the libelant to the hospital, too much stress entirely is being laid on this hospital report, particularly so since we have so much testimony from various witnesses concerning Captain Eklund and his conduct or actions such as they were immediately prior to and after the collision.

I do not want to interfere with the way you gentlemen conduct your case. I am merely making that observation because you gentlemen have been spending some time in going into details of a part of the record of this case which I shall necessarily have to read.

Q. I will ask just one question then, Doctor. Do you [373] have anything further to say in support of your previous expressed opinion in view of what you have heard here today, or what you have read in that record just now?

Mr. Estabrook: I must object to that question, your Honor, as to form.

The Court: The form is bad, Mr. Dow.

Mr. Dow: I am only trying to save time.

The Court: I presume that you called Dr. Balensweig back for rebuttal. Now, if there is anything in the testimony of either expert called by the respondent that you want to get testimony from Dr. Balensweig on please refer specifically to those questions and ask him whether he agrees or disagrees.

By Mr. Dow:

Q. You have heard it testified, Doctor, that the history of the medication used here was compatible with a head injury.

Do you agree with that, sir?

Mr. Estabrook: I must object to that question. That has been gone into in great detail.

The Court: Objection overruled. I will allow it. There was some testimony about the use of

codeine and I think one witness testified it was indicated and I think that Dr. Zito, although he said he would not [374] use any morphine, any opium derivative in connection with a head injury, did say it was accurate and correct to use the codeine.

The Witness: I disagree with the thought that they were giving this codeine primarily for headaches because under the date of 6/16/48 they state:

"A. P. C. tablets codeine, grains ½ every four hours P. N. R. for headache, head injury B. P. pulse and respiration chart, recording every two hours."

You see they still were suspecting a head injury and you simply do not ask them to take a blood pressure reading and a pulse and respiration rate reading every two hours unless——

The Court: I think you stated all that on your direct examination, didn't you, Doctor?

The Witness: That is right, sir.

By Mr. Dove:

Q. Doctor, we have had some testimony here that the medicine given was for the anxiety status rather than for alcoholism.

Can you point out—well, let me ask you this: Do you agree with that?

Mr. Estabrook: I object to that question, your Honor. There was no testimony that it was for anxiety [375] state instead of alcohol.

The Court: Objection sustained.

The question about the possibility of use for that purpose was sought to be developed on cross-exami-

nation. However, there is nothing in the report about alcoholism at all and what you sought to do, through Dr. Balensweig, was to get testimony in the case that some conditions shown in that report are symptomatic of alcoholism.

As a matter of fact, Mr. Dow, Captain Eklund did not get there until eight days after the accident.

Mr. Dow: That is all, Doctor.

Mr. Estabrook: No questions.

(Witness excused.)

The Court: Do both sides rest, gentlemen?

Mr. Eklund: The respondent rests, sir.

Mr. Dow: The libelant rests.

The Court: I shall of course reserve decision. I will await your briefs considering that it will take about two weeks to get the testimony I will set down the 31st of January for the submission of your original briefs and then I shall ask that all reply briefs and all exhibits be submitted not later than the 7th of February.

Interlocutory Decree A. 19244, A. 19486

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

HELLENIC LINES, LTD., owner of SS HELLENIC BEACH, Libelant, *vs.* SS EXMOUTH, her engines, boilers, etc., and AMERICAN EXPORT LINES, INC. Respondents.	A. 19244
AMERICAN EXPORT LINES, INC., as Owner of the SS EXMOUTH, Libelant, THOMAS KENWORTHY'S SONS, et al., Cargo Intervenors, *vs.* SS HELLENIC BEACH, her engines, boilers, etc., and HELLENIC LINES, LTD., Respondents.	A. 19486

Interlocutory Decree

A libel having been duly filed herein by Hellenic Lines, Ltd., owner of the SS "Hellenic Beach", against the SS "Exmouth" in rem and American Export Lines, Inc. in personam (Docket No. A. 19244), and a cross libel having been filed by American Export Lines, Inc., as owner of the SS "Exmouth" against the SS "Hellenic Beach" in rem and Hellenic Lines, Ltd., in personam (Docket No. A. 19486), and Thomas Kenworthy's Sons, et al., as owners, underwriters, etc., of the cargo on board the SS "Exmouth", having intervened in the said action, by order of the Court dated July 14, 1950, and the cases having been consolidated

and regularly come on for trial before the Honorable Leo F. Rayfiel, U. S. D. J., and at the opening of the trial the parties having stipulated that if the suit and the cross suit between the owners of the SS "Exmouth" and the SS "Hellenic Beach" should result in a decision of sole fault on the part of the SS "Hellenic Beach", or mutual fault on the part of both vessels, that the cargo intervenors shall be entitled to an appropriate interlocutory decree in their favor, and proofs having been adduced by the respective parties hereto and briefs having been submitted and the Court, after due deliberation, having rendered its opinion in writing and subsequently having made findings of fact and conclusions of law in writing in accordance with the said opinion, holding both vessels at fault;

NOW ON MOTION of Bigham, Englar, Jones & Houston, Proctors for cargo intervenors, Thomas Kenworthy's Sons, et al., it is

ORDERED that these cases be and they hereby are consolidated for the purpose of this decree; and it is further

ORDERED that the opinion of the Court heretofore filed herein on the 28th day of September 1955, and the findings of fact and conclusions of law subsequently made by the Court in conformity therewith, be and they hereby are adopted as the Court's findings of fact and conclusions of law, in accordance with Supreme Court Rule 46½; and it is further

ORDERED, ADJUDGED AND DECREED that Thomas Kenworthy's Sons, et al., intervenors on behalf of cargo laden on board the SS "Exmouth", recover of and from the SS

"Hellenic Beach" in rem and her claimant and stipulators and/or Hellenic Lines, Ltd., in personam the full amount of their damages sustained arising out of the matters and things set forth in the intervening petition filed by them herein, together with interest and costs, and that said vessel and is owner and stipulators be condemned therefor; and it is further

ORDERED, ADJUDGED AND DECREED that the libelant-respondent Hellenic Lines, Ltd., as owner of the SS "Hellenic Beach", recover of and from the SS "Exmouth", in rem, and her claimant and stipulators and/or American Export Lines, Inc., in personam, one-half of the damages arising out of the matters and things as alleged in its libel, without interest until after the balance between the damages sustained by the respective vessel owners is struck, but including one-half of whatever amount, including interest and costs, it has had to pay to cargo intervenors, Thomas Kenworthy's Sons, et al., together with one-half of its own costs to date, and that said vessel and its owner and its stipulators be condemned therefor; and it is further

ORDERED, ADJUDGED AND DECREED that the libelant-respondent American Export Lines, Inc., as owner of the SS "Exmouth", recover of and from the SS "Hellenic Beach", in rem, and her claimant and stipulators and/or Hellenic Lines, Ltd., in personam, one-half of the damages arising out of the matters and things as alleged in its libel without interest until after the balance between the damages sustained by the respective vessels is struck, together with one-half of its own costs to date, and that said vessel and its owner and its stipulators be condemned therefor; and it is further

Interlocutory Decree A. 19244, A. 19486

ORDERED that it be referred to Barnett J. Nova, Esq., as Commissioner to ascertain and compute the amount of the damages sustained by the respective parties hereto and to report thereon to this Court with all convenient speed.

Dated: Brooklyn, New York
December 26th, 1956.

/s/ LEO Z. RAYFIEL
U. S. D. J.

We the undersigned hereby waive notice of settlement of the foregoing proposed Interlocutory Decree dated December 12, 1956.

BIGHAM, ENGLAR, JONES & HOUSTON
Proctors for Cargo Intervenors

DOW & STONEBRIDGE
Proctors for Libelant-Respondent
Hellenic Lines, Ltd., as owned of
the SS "Hellenic Beach"

HAIGHT, GARDNER POOR & HAVEN
Proctors for Libelant-Respondent
American Export Lines, Inc., as
owner of the SS "Exmouth"

Opinion of Rayfiel, D. J.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

HELLENIC LINES, LTD., owner of SS HELLENIC BEACH, Libelant, *vs.* SS EXMOUTH, her engines, boilers, etc., and AMERICAN EXPORT LINES, INC. Respondents.	A. 19244
AMERICAN EXPORT LINES, INC., as Owner of the SS EXMOUTH, Libelant, *vs.* SS HELLENIC BEACH, her engines, boilers, etc., and HELLENIC LINES, LTD., Respondents.	A. 19486

Appearances:

Dow and Symmers, Esqs., Proctors for Hellenic Lines. By Wilbur E. Dow, Jr., Esq., Advocate.

Haight, Deming, Gardner, Poor and Havens, Esqs., Proctors for American Export Lines. By James M. Estabrook, Esq., and Walter Darby, Esq., Advocates.

Bigham, Englar, Jones and Houston, Esqs., Proctors for Petitioners. By Charles A. Van Hagen, Jr., Esq., Advocate.

Opinion of Rayfiel, D. J.

Before: RAYFIEL, J.

Shortly after 2:00 A. M., on June 5, 1949, a collision took place between two vessels, the "Exmouth" and the "Hellenic Beach" in the vicinity of Overfalls Lightship, at the mouth of Delaware Bay. The "Exmouth" was bound from New York to Philadelphia, with 300 tons of cargo aboard; the "Hellenic Beach" was bound from Philadelphia to New York, and was carrying 5000 tons of cargo.

The "Hellenic Beach" filed a libel against the "Exmouth", which, in turn, filed its cross libel. The owners of the cargo on board the "Exmouth" intervened, and the parties stipulated "That if the suit and the cross suit between the owners of the SS Exmouth and the SS Hellenic Beach should result in a decision of sole fault on the part of the Hellenic Beach, or mutual fault on the part of both vessels, that the cargo intervenors shall be entitled to an appropriate interlocutory decree in their favor * * *"

The "Exmouth" was a vessel of the type known as a Victory ship. She was 439 feet long, with a beam of 63 feet. Her engines developed 8500 horsepower, which gave her a maximum speed of about 17 knots. The "Hellenic Beach" was of the type known as a Liberty ship. She was 422 feet long, with a beam of 57 feet. Her engines developed 2500 horsepower, which gave her a top speed of about 10½ knots.

While it had been foggy earlier that night, the visibility at the time of the collision was about five miles. There was some wind, a slight swell, and the tide was at flood, running northwest at over two knots.

The "Exmouth" had run into the fog earlier that night, and had anchored about a mile southwest of Overfalls Lightship. At about 1:42 A. M., the fog having lifted, she heaved up anchor. At about 1:51 A. M. she was under way

at her full maneuvering speed, which was about 12 knots, and proceeded on a course of about 285 degrees past the Overfalls Lightship. Her master, Captain Ecklund, was on her bridge, directing her navigation. With him were the third mate, Bernard E. Griffin, who was the officer on watch, and Whitney, the helmsman. The first officer and a lookout man were at the bow, acting as lookouts.

The "Hellenic Beach" had dropped her pilot at 1:50 A. M. At 1:52 A. M. the order was given for full speed ahead, and she proceeded on a course of 124 degrees true to pass Overfalls Lightship on her left. She was being navigated from her flying bridge by Captain Macris, her master. With him were the second mate and a helmsman. A lookout was stationed on the forecastle.

Captain Ecklund testified that just as he passed the Lightship he ordered the helmsman to swing left to 311 degrees, and then went into the chartroom for a few seconds. When he emerged from the chartroom he saw a vessel which proved to be the "Hellenic Beach". He observed her masthead light, range light and red port side light bearing about 45 degrees on his starboard bow, and about a mile off. He stated that he ordered the helmsman to swing hard left, and he blew two sharp blasts of the whistle, thinking that the vessels would cross port to port. Instead of carrying out his order the helmsman said: "You mean right captain," and the third mate (Griffin) said "hard right, hard right," (SMP 117) which Captain Ecklund testified that he did not want, and ordered the helmsman to go hard left, with which order he complied. At that point the "Hellenic Beach" was bearing down on the "Exmouth" which, almost immediately thereafter, she struck at the Number 4 Hold.

Griffin, the "Exmouth's" third mate, called as a witness by the "Hellenic Beach", testified that shortly after the

"Exmouth's" anchor was heaved up and she was proceeding at full maneuvering speed, steadied on a course of 290 degrees, he saw the lights of another vessel (the "Hellenic Beach") which was coming down from the direction of the pilot station. He estimated she was then about three or four miles from the "Exmouth". He stated that he saw her masthead, range and red port side lights; that thereafter the "Exmouth" passed the Lightship about a quarter of a mile off, and her heading was then approximately 285 degrees; that the other vessel ("Hellenic Beach") was about a mile or two away, about 45 degrees on her starboard bow; that he had called Captain Ecklund's attention to the other ship before they had passed the Lightship; that after they had passed it Captain Ecklund ordered a change of course left to 317 degrees, to which the helmsman replied: (S. M. p. 170) "You mean right captain", and that he, Griffin, then added: "Yes, that's right, you will have to come to the right". Griffin testified, further, that Captain Ecklund repeated the command to come hard left, and the helmsman obeyed the order; that at that time the ships were only half a mile apart, that he (Griffin) then went into the chartroom to check the course, and ascertained that the change of course should have been to the right, instead of the left; that he told this to Captain Ecklund, who then ordered the helmsman to come right, but the vessels were then less than 50 yards apart; that the master blew the two blasts on the whistle and gave the "hard right" order, but the collision ensued.

There is no dispute that under the then existing circumstances and conditions the "Exmouth" was the burdened vessel and the "Hellenic Beach" the privileged one, for at page 21 of their brief, the proctors for the former admit that she (the "Exmouth") "unquestionably was in open and

apparent violation of International Rule 19 which states 'when two steam vessels are crossing so as to involve risk of collision, the vessel which has the other on her starboard side shall keep out of the way of the other' ". The "Exmouth" not only failed to keep out of the way of the "Hellenic Beach" in clear violation of Rule 19, supra, (33 U. S. C. sec. 204) but her master navigated her in such a faulty manner as to make the collision inevitable. There was testimony to the effect that Captain Ecklund was intoxicated during his aforementioned supervision of the navigation of the "Exmouth" but, regardless of the cause of his faulty navigation, there appears to be no doubt that he operated the "Exmouth" in clear violation of International Rule 19 (33 U. S. C. sec. 204).

Let us see what those charged with the navigation of the "Hellenic Beach" were doing all this time. Captain Macris, her master, testified that sometime after she dropped her pilot he saw two masthead lights and a green light of a vessel, which later proved to be the "Exmouth" from two to four points on his port bow, at a distance of about a mile and a half, and that he expected the vessel to turn right while he maintained his course and speed. As he said, (page 27 of the minutes of the trial) "Under the rules I had to hold my course and speed, and the other ship had to turn right and show me the red light after I showed it to her." He stated, further, that he blew a one-blast signal when he was less than a mile away, but that there was no answer from the "Exmouth"; that at three quarters of a mile he blew another one-blast signal, and the "Exmouth" responded with a two-blast reply; that at about that point he sensed that there was danger of a collision, put his helm hard right, and signalled to the engine-room for full speed astern. The order was carried out, but almost immediately thereafter the collision took place.

On cross examinat' n he was questioned concerning his testimony taken by deposition on June 14, 1949, nine days after the accident and admitted that he then testified as follows:

(S. M. p. 50)

"Q. I shall read to you now from page 11:

'Q. Did you blow any whistles? A. A little while later when I first thought the distance was shorter and she did not change course as she had to I blew my whistle one blast. I wanted to tell her to keep out of my way'.

Q. Do you remember being asked that question and making that answer? A. Yes.

Q. Do you remember being asked this question:

'Q. How far away was she at that time, about? A. A little more than half a mile.' Do you remember that? A. If I said so I admit it."

A sketch was then offered and received in evidence, marked Respondents' Exhibit "C", showing the position of the two vessels, and containing these words in Captain Maeris' handwriting: "Approximate distance one half mile" (S. M. p. 52)

The cross examination continued: (S. M. p. 52): "Do you remember on cross examination being asked this question, and I read to you now from page 25, about three-quarters of the way down:

'Q. At that time how far were you from the Exmouth in your opinion? A. About when, the second blast? "Q. When you sounded your second one-blast signal? A. May be a quarter of a mile'.

Do you remember being asked those questions and making those answers? A. If it is there, yes."

And further, at page 53 of the minutes of the trial:

"Q. Now on page 26 of your deposition I read to you and ask you if you remember being asked this question:

'Q. I think you said that your best estimate was then about a quarter of a mile, "and you were discussing then the distance between the ships at the second one blast signal, and you said: 'A. Yes, about a quarter of a mile when I blew the second blast'.

Do you remember being asked that question and making that answer? A. I don't remember but maybe I said it."

Following is further testimony of Captain Macris (S. M. p. 54):

"Q. Now, captain, you testified before the Coast Guard, did you now? A. Yes, sir.

Q. And that was on June 8, three days after the collision? A. Yes.

Q. Your recollection was still better then, wasn't it, than it was at the time of the deposition? A. Yes.

* * *

Q. Were you asked these questions at that time:

'Q. Coming to the first one-blast signal, how far were you apart? A. Perhaps half a mile.

Q. What was the bearing of your ship then, was she still on the same position on your bow? A. Yes, in the same position on my port bow, maybe three points.

Q. In other words, the bearing of your ship had not changed any? A. I had no time to take bearings.

Q. I am speaking of your estimation watching the ship. You did not consider the bearing to be changed? A. Yes.

Q. She remained on your starboard bow showing her green light? A. Yes. (counsel agreed that there was an error

in the transcription of the word "starboard" in the last question; it should have read "port".)

Q. That is the time you blew one blast? A. That is right.

Q. You were about a half a mile apart. A. Yes.'

Do you recall that testimony, Captain? A. Yes.

Q. Was it correct? A. Everything that is in there is correct as to what I say." (matter in parenthesis added)

The "Hellenic Beach", as the privileged vessel, was required, under Article 21 of the International Rules (33 U. S. C. sec. 109), to "keep her course and speed," and had the right to expect the "Exmouth" as the burdened vessel, to keep out of her way, as she was obliged to do under Article 19 of the International Rules (See U. S. C., sec. 104) C. F. Marsden's Collisions at Sea (9th Ed., 934) pp. 375-380; Le Boyteaux, Rules of the Road at Sea (1920) p. 133. But the "Hellenic Beach" was likewise bound by the International Rules, Articles 27 and 29 (33 U. S. C. sections 112 and 121, respectively) which read as follows:

Article 27 "In obeying and construing these rules, due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.

Article 29. Nothing in these rules shall exonerate any vessel or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case."

Did Captain Macris, in his navigation of the "Hellenic Beach", exercise the care, prudence and judgment required

of him under Articles 27 and 29, supra? In my opinion he did not. His testimony at the Coast Guard hearing and at the taking of his deposition, both of which occurred shortly after the collision, when his recollection of the events in question was undoubtedly more vivid than it was at the trial, more than five years thereafter, satisfies me that the "Hellenic Beach" and the "Exmouth" were only half a mile apart when the former sounded her first one-blast signal and only a quarter of a mile apart when the second was sounded, immediately after which Captain Macris heard the "Exmouth's" two-blast signal and ordered his vessel's helm hard right and her engines full astern. It must be noted that the vessels were approaching each other at a combined speed of over twenty knots, at night, and at a time when, by his own admission, it was difficult to judge distances. In my opinion the master of the "Hellenic Beach" was guilty of a navigational fault when he failed to take affirmative action when the vessels were only half a mile apart. Instead of sounding a one-blast signal at that time, as he did, he should have realized that the situation confronting him was fraught with imminent danger, and should have sounded the danger signal and ordered her engines full speed astern.

Captain Macris' testimony (pages 28 and 29 of the S. M. of the trial) amply supports the conclusion that when the second one-blast signal was sounded the vessels were in extremis, and yet he did nothing to avoid the collision which was then so imminent.

Proctors for the "Exmouth" argue that the decision in the case of Rivera vs American Export Lines, Inc., and Hellenic Lines, Inc., owners, respectively, of the "Exmouth" and the "Hellenic Beach", holding both vessels at fault, is determinative of the case at bar. In that case, brought in

the Southern District of New York, Rivera, a member of the crew of the "Exmouth" sued the owners of both vessels to recover damages for personal injuries which he sustained as the result of the aforementioned collision. He recovered a judgment of $90,000 against both defendants.

Proctors for the "Hellenic Beach" contend, on the contrary (1) that the issues in the Rivera case, differed from those in the instant case, and (2) that as a result of a conference in the Rivera case, held before Judge Irving R. Kaufman, and called for the purpose of attempting to effect a settlement thereof, a stipulation was entered into providing that the decision in the case at bar would serve to determine the Rivera case. The second point of contention may be dismissed without discussion since the Rivera case was not settled. It went to trial and judgment, and a verdict was rendered against both defendants for $90,000.00 half which was paid by each defendant. No appeal was taken.

The "Hellenic Beach" proctors' first contention, to wit, that the issues in the Rivera case and the instant case are not the same, is inconsistent with the position which they took at a pre-trial conference before Judge Leibell in the Rivera case, in which they sought to use certain depositions taken in the case at bar. In his decision (13 F. R. D. 27) Judge Leibell said, at page 28: "*Rivera and Hellenic contend that the issues as to liability are identical in the two actions and that for that reason the depositions should be received in evidence in this action.*" and, at page 29, "The memoranda submitted by counsel indicate that the same negligence that resulted in plaintiff's injuries allegedly caused the damage to the vessels. *The same set of facts and circumstances operated to bring about the collision, which resulted in damage to the vessels* and the injuries to the plaintiff." (emphasis added)

It is apparent that Judge Leibell agreed with the argument advanced by the proctors for the "Hellenic Beach" in that case, for, in granting the application for leave to use the depositions, he said at page 30: "The answers of the respective defendants (the parties herein) each assert a claim over against the other for indemnity; *their interests are clearly antagonistic, to the same extent as if one were suing the other.* Under those circumstances there appears to be no good reason for denying to Hellenic Lines the right to use the depositions as part of Hellenic's proof against Export in this Rivera action." (emphasis and matter in parenthesis added) It would appear, then, that the verdict in the Rivera case is dispositive of the issues in the case at bar.

In view of the foregoing I find both vessels at fault. The intervening cargo owners are entitled to an interlocutory decree in their favor.

Submit findings of fact, conclusions of law and decree in conformity herewith.

Dated: September 28, 1955

/s/ J. Rayfiel
United States District Judge

Findings of Fact and Conclusions of Law

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

HELLENIC LINES, LTD., owner of SS HELLENIC BEACH, Libelant, —*against*— SS EXMOUTH, her engines, boilers, etc., and AMERICAN EXPORT LINES, INC., Respondent.	A. 19244
AMERICAN EXPORT LINES, INC., as the owner of the SS EXMOUTH, Libelant, —*against*— SS HELLENIC BEACH, her engines, boilers, etc., and HELLENIC LINES, LTD., Respondent.	A. 19489

FINDINGS OF FACT

1. At all times hereinafter mentioned the steamship HELLENIC BEACH was a Liberty-type ship, 422 feet in length, with a 57 foot beam and engines which developed 2,500 horsepower, giving her a top speed of about 10½ knots. The HELLENIC BEACH was proceeding from Philadelphia to New York loaded with about 5,000 tons of cargo.

2. At all times hereinafter mentioned the steamship EXMOUTH was a Victory-type ship, 439 feet in length,

with a 63 foot beam and engines which developed 8,500 horsepower, giving her a top speed of about 17 knots. The EXMOUTH was proceeding from New York to Philadelphia loaded with about 300 tons of cargo.

3. The two vessels collided shortly after 2:00 A.M. on the morning of June 5, 1949, in International Waters, in the vicinity of Overfalls Lightship at the mouth of Delaware Bay.

4. For some minutes prior to the collision the vessels had been on crossing courses, the EXMOUTH having just passed Overfalls Lightship, was headed in a generally Westerly direction, and the HELLENIC BEACH was headed in a generally Southeasterly direction towards the Overfalls Lightship.

5. Although it had been foggy earlier, the visibility at the time of the collision was about 5 miles. There was some wind, a slight swell and flood tide running in a Northwesterly direction at over two knots.

6. The EXMOUTH had been anchored since early evening about a mile southwest of the Overfalls Lightship, at about 1:42 A.M., she heaved anchor, and at 1:51 A.M. was under way at a speed of about 12 knots on a course of 285 degrees. The Master, third mate, and helmsman were on the bridge, and the first officer and a seaman were at the bow as lookouts.

7. The third mate on the EXMOUTH first saw the HELLENIC BEACH soon after heaving anchor and called the Master's attention to the ship before they passed the Lightship.

8. As the EXMOUTH passed the Lightship, the Master of the EXMOUTH ordered a change of course from about 285 degrees to 311 degrees and then, as he sighted the masthead, range and portside light of the HELLENIC BEACH bearing 45 degrees off his starboard bow at a distance of about one mile, he blew two blasts on the whistle to indicate a change of course to the left, and ordered his helm hard left. Due to counter orders by the third mate, the Master's order was not immediately carried out.

9. The testimony of the third mate of the EXMOUTH was to the effect that the final order to the helm was hard right, not hard left, and at a time when the vessels were only 50 yards apart the Master of the EXMOUTH blew two blasts on the whistle.

10. The speed of the EXMOUTH was not reduced prior to the collision.

11. The HELLENIC BEACH, proceeding down the Bay, slowed to drop her river pilot at 1:50 A.M. and at 1:52 A.M. was ordered to full speed on a course of 124 degrees to pass Overfalls Lightship on the port. The Master was navigating and had with him on the open flying bridge the second mate and helmsman. A lookout was at the bow.

12. Shortly after dropping the pilot, the Master of the HELLENIC BEACH saw the masthead, range and Starboard side lights of a vessel, which later proved to be the EXMOUTH, bearing between 2 and 4 points on his port bow at a distance of about a mile and a half.

13. At a point when the EXMOUTH was approximately one half mile from the HELLENIC BEACH, the Master of

the HELLENIC BEACH blew a one blast signal and maintained course and speed.

14. At a point when the vessels were approximately one quarter of a mile apart, a second one blast signal was sounded by the HELLENIC BEACH which was continuing at full speed. Although the vessels were then in extremis, the Master of the HELLENIC BEACH did nothing to attempt to avoid a collision until he heard a two-blast signal in reply, whereupon he ordered his helm hard right and signalled the engine room to full speed astern.

15. Shortly thereafter the two vessels collided with resultant damage to both vessels.

CONCLUSIONS OF LAW

1. The navigation of the EXMOUTH was in violation of International Rule 19 (33 USC sec. 204), also termed The Starboard-Hand Rule, in failing to keep out of the way of the HELLENIC BEACH, as the EXMOUTH was the burdened vessel in a crossing situation.

2. Under the same rule (33 USC sec. 204) the HELLENIC BEACH was the privileged vessel.

3. The navigation of the EXMOUTH was such that under Rule 19 of the International Rules (33 USC sec. 204), she is at fault in the collision.

4. Regardless of the failure of the EXMOUTH to navigate in accordance with International Rule 19 (33 USC sec. 204), the HELLENIC BEACH was bound to take the necessary precautionary action to avoid the collision under

the special circumstances of the situation, pursuant to International Rule 27 and 29 (33 USC sec. 112 and sec. 121).

5. The navigation of the HELLENIC BEACH was such that under International Rules 27 and 29 (33 USC sec. 112 and sec. 121), she is at fault for the collision.

6. Both vessels are at fault for the collision and intervening cargo owners are entitled to an interlocutory decree in their favor.

7. The verdict in the litigation, *Rivera* v. *American Export Lines, Inc.*, and *Hellenic Lines, Ltd.*, in which the facts and circumstances were the same as those herein, and in which both vessels were held at fault for injuries to a member of the crew on board the EXMOUTH, is depositive of the issues in this case.

Dated: December 27, 1956

/s/ LEO Z. RAYFIEL
United States District Judge

Notice of Appeal of Respondent Hellenic Lines, Ltd. (A. 19486)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

AMERICAN EXPORT LINES, INC., as owner of the S. S. EXMOUTH, Libellant, THOMAS KENWORTHY'S SONS, et al., Cargo Intervenors, —*against*— S. S. HELLENIC BEACH, her engines, boilers, etc., and HELLENIC LINES, LTD., Respondents.	A. 19486

SIRS:

PLEASE TAKE NOTICE that HELLENIC LINES, LTD., respondent above-named, and claimant of the S. S. HELLENIC BEACH, her engines, boilers, etc., hereby appeals to the United States Courts of Appeals for the Second Circuit from the Interlocutory Decree entered in this action on the 26th day of December, 1956, and from each and every part of said Decree.

Dated: New York, New York
January 10, 1957

Yours, etc.,

DOW & STONEBRIDGE
Proctors for Respondents
Office and P. O. Address
70 Pine Street
New York 5, New York

Notice of Appeal of Respondent Hellenic Lines, Ltd. (A. 19486)

To: Messrs. Haight, Gardner, Poor & Havens
Proctors for Libellant
80 Broad Street
New York, New York

Messrs. Bigham, Englar, Jones & Houston
Proctors for Cargo Intervenors
99 John Street
New York, New York

Notice of Appeal of Libelant Hellenic Lines, Ltd. (A. 19244)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

HELLENIC LINES, LTD., owner of S. S. HELLENIC BEACH, Libellant, —*against*— S. S. EXMOUTH, her engines, boilers, etc., and AMERICAN EXPORT LINES, INC., Respondents.	A. 19244

SIRS:

PLEASE TAKE NOTICE that HELLENIC LINES, LTD., owner of the S. S. HELLENIC BEACH, libellant above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Interlocutory Decree entered in this action on the 26th day of December, 1956, and from each and every part of said Decree.

Dated: New York, New York
January 10, 1957

Yours, etc.

DOW & STONEBRIDGE
Proctors for Libellant
70 Pine Street
Office and P. O. Address
New York 5, New York

To: MESSRS. HAIGHT, GARDNER,
POOR & HAVENS
Proctors for Respondents
80 Broad Street
New York, New York

Libelant's Exhibit 1

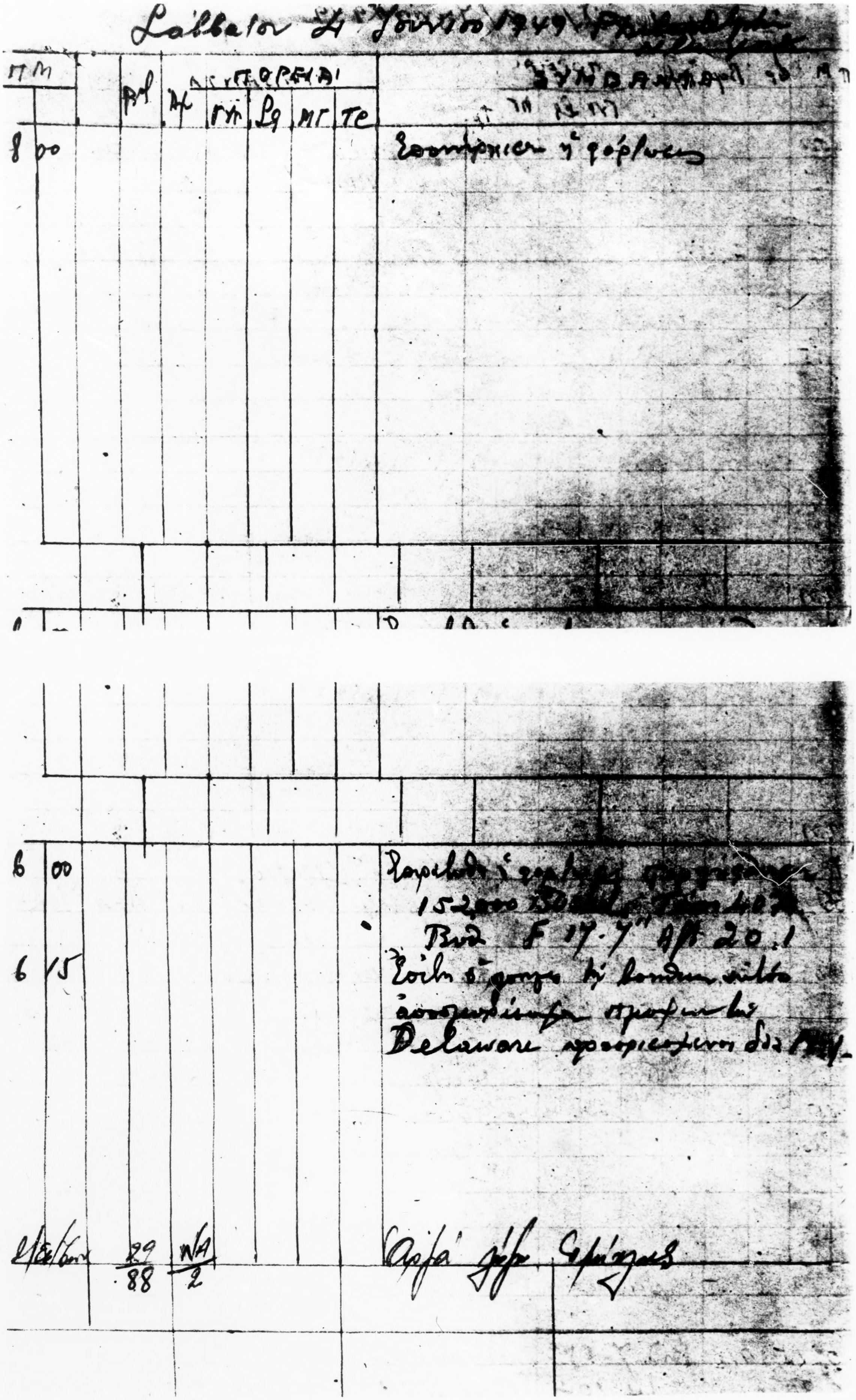
TRANSLATION OF DECK LOG
of
SS HELLENIC BEACH

* * * *

Sunday, 5th June 1949:

1:45 a.m. Half ahead.
1:50 a.m. Stop. We dropped the pilot.
1:52 a.m. Course true. 124. Mag. comp. 134°. Full ahead.
2:02 a.m. Collided with the American s.s. EXMOUTH of New York. Pilot boat asked us whether we want any assistance. We answered No. The s.s. EXMOUTH seemed to be able to make port and was in no need of assistance. We are examining damage.
2:30 New fog set in. Proceeding to New York.
2:46 Overfalls L.V. abeam. Account fog we go slow ahead.
6:15 a.m. Bar. 29/82 Course true 30°. Five fathom bank L.V. abeam. Steaming slow account fog.
8:00 a.m. Course 32° true. Mag. 41°. Ditto.
11:22 a.m. Course 20° Mag. 30°. Altered course.
Noon: Bar. 28/81. Calm. Course 20°. Mag. 30°. We still have fog. Steaming slow.
0:40 p.m. Course 10°. Mag. 20°. Barnegat L.V.
1:50 p.m. Weather cleared. Full ahead.
4:00 p.m. Stand by.
4:15 p.m. Slow.
4:17 p.m. Stop. Waiting for Pilot.
4:26 p.m. Pilot shipped. Proceeding to New York.
5:50 p.m. Dock pilot shipped.
6:45 p.m. With two tugs assisting we got alongside pier foot of Court St. Brooklyn.

Libelant's Exhibit 1



(p. 302 - Cont'd)

Κυριακή 5η Ιανουαρίου 1941

ΠΜ		Βορ Α	Ώρα		
			ΓΝ	ΖΡ	ΝΔ
48					Ήρεμοκαιρία
50					Καλός - ανοιξιάτικος ήλιος
52			12½	13½	Ομοιόχρωμος δε τον προορισμόν μας
2 52	Συνεχίσαμε με το ατμόπλοιον SS EXMOUTH NEW YORK. Πλοίον πρώτου				
	ταξιδιού προς Βορειοδυτικά. Αποκλειστικόν όχι το EXMOUTH εφάνηκε ικανόν να				
	κυκλοφορή προς τον Δάφνη και τον ορεινόν βράχον. Βλέπομεν την ξηράν				
2 30	Νεο ανοίγει - Συνεχίζει το νέον, προχωρούμε το νέον Φανάρι				
1 41	Σφαίρα OVERFALLS. Τόρα ανοίγει				
	ορίζοντα ξηράς				
6 15		82	30		Παρ. Five Fathom L^t Vess.
					εξαφανίζεται η όπίσω ορίζοντα ξηράς
8 [illegible]			32	41	134 Ολοκληρώθη

4 22½				38	Αλλαγή πορείας προς Δυσμάς.
12 [illegible]		[illegible]		30°	Εξαφανίζεται η όπίσω - πλησίον ξηρά

6	15	82	30		Παρ. Five Fathom L^t Vess.
					εξαφανίζεται η όπίσω ορίζοντα ξηράς
8 [illegible]			32	41	134 Ολοκληρώθη

4 22½				38	Αλλαγή πορείας προς Δυσμάς.
12 [illegible]		[illegible]		30°	Εξαφανίζεται η όπίσω - πλησίον ξηρά
10 40			10	20	Φανάρι BARNEGAT L.V.
1 50					Διεξόδη η όπίσω - Ομοιόχρωμος
4 00					προσοχή
4 07					Ηρεμοκαιρία σήμερον AMBROSE L.V
4 15					ξηρά
4 17					Κρούει - Αναφορά πλοίου
4 26					Επιβιβάζει πλοηγόν. Προχωρούμε δια Νέα Υόρκην.
5. 50					Έρχεται ο Port Pilot
6. 45					Τη δεύτερα αύριον και δύο (2)
					Πλοία πλησιάζουν εξερχόμενα από
					Το Pier foot of Court St. Brooklyn.

Note

Page 303 is on
Card 6

Libelant's Exhibit 3

[46] DMETRIOS LEGAKIS, being first duly sworn by the Notary Public, testified as follows:

> Mr. Dow: The chief engineer will testify in English, but the interpreter is in the room standing by in the event he is unable to manage the language.

Direct Examination by Mr. Dow:

Q. Were you the chief engineer of the SS Hellenic Beach on June 5, 1949? A. Yes.

Q. Was the vessel, at that time, enroute from Philadelphia to New York? A. Yes.

Q. Do you, of your own knowledge, know when the collision took place? A. Yes.

Q. With the SS Exmouth? A. Yes.

Q. What time was that? A. 2:02.

Q. A. m.? A. Yes.

[47] Q. Approximately, if you know, where was the ship at that time? A. I don't know the place, the name of the place.

Q. Where were you at that time? A. I was in my room at that time.

Q. How long had you been there? A. About 2 or 3 minutes.

Q. What were you doing at that time? A. I was washing my hands, because at that time I came from the engine room.

Q. You had been down in the engine room up until that time? A. Around the engine room from the time we left Philadelphia to 1:56, when the telegraph rung and the pilot left and the weather was clear and the telegraph rings it is all right.

Libelant's Exhibit 3
Deposition of Dmetrios Legakis

Q. Do you have the engine room log books and the engine room bell books? A. Yes. (Handing to Mr. Dow)

Q. I show you a book and ask you what it is? (Handing to the witness) A. The time book of the engine room.

Q. What we call the "bell book"? [48] A. Yes.

Q. You call it the "time book"? A. The scrap log book of the engine room. The watch writes the time and I take it from him and write it here.

Q. This is a combination scrap log book and bell book of the engine room? A. A. Yes.

Q. I ask you to turn to the pages for June 5, 1949. A. This is it.

Mr. McKown: You had better get him to identify it right from Philadelphia down.

Mr. Dow: I am about to ask him that.

Q. Where is it when you left Philadelphia? A. We left Philadelphia at 4:15 p.m. of the 4th of June. In port we had one boiler and before we left we joined two boilers, to warm the engine, to prepare the engine.

Mr. McKown: Get him to point out the page where the entries are leaving Philadelphia and then get it marked.

Q. That was at 4:15? A. Yes.

Mr. Dow: I offer this book, these two pages, as [49] Hellenic Beach Exhibit 7 for identification, and ask that in this case, as in all others that have been offered here, that a photostat be accepted in lieu thereof.

(Two pages of the scrap bell book of the SS Hellenic Beach marked Hellenic Beach Exhibit 7 for identification, as of the date.)

Libelant's Exhibit 3
Deposition of Dmetrios Legakis

Mr. McKown: Those two pages take you from when you left Philadelphia until you got to New York, is that right?

The Witness: I think so, yes.

Mr. McKown: Is any of it in your handwriting?

The Witness: The watch engineers write it.

Mr. McKeown: You did not make these maneuver entries yourself?

The Witness: No.

Mr. McKeown: I will accept a photostat.

By Mr. Dow:

Q. I show you another book, Chief, and ask you what this is? (Handing to witness) A. This is the log book.

Q. From the bell book and engine scrap log you put them in this book? [50] A. Yes. When we start to go, the time, and when we finish.

Q. The other bells you leave out, the other signals from the bridge to the engine room, you leave out of your own log book? A. Yes.

Q. This log book that you have now shown us is one you keep yourself? A. Yes.

Q. It is all in your own handwriting? A. That is right.

Q. Nobody else writes in there? A. That is right.

Mr. Dow: I offer that log book, entitled "Engineer's Log, SS Hellenic Beach," as Hellenic Beach Exhibit 8 for identification.

(Book entitled Engineer's Log, SS Hellenic Beach marked Hellenic Beach Exhibit 8 for identification, as of this date.)

Libelant's Exhibit 3
Deposition of Dmetrios Legakis

By Mr. Dow:

Q. How long have you been chief engineer on the Hellenic Beach? A. Since the 5th of September.

[51] Q. 1948? A. Yes.

Q. How long have you been a chief engineer? A. From 1938-39.

Q. About 10 years. A. Yes.

Q. What license do you hold? A. Chief engineer.

Q. Greek license? A. Yes.

Q. You were in your room at the time of the collision, washing your hands? A. Yes.

Q. Did you hear any whistle signals just prior to the collision? A. Yes.

Q. What did you hear? A. I heard, the first time, I heard two, I think, and then I heard from the other one. The first time I just heard from ours and then I heard from the other ship. I don't remember how many whistles there were, because I didn't pay any attention. Then when I heard, then I heard the telegraph full astern——

[52] Q. How do you know it was full astern? A. Because when the pilot left, the telegraph it was full ahead. Then my bathroom is just under the telegraph on the bridge and then I heard the telegraph comes and the handle knocking, the handle knocking on the stern ahead. I knew it was full ahead before, and then there was no other bump, so it must be full astern.

Q. When the handle hits the stop? A. Yes, when the handle stops, it knocks on one side or the other side. So it must be either full ahead or stern ahead.

Q. Full ahead or full astern? A. Yes.

Q. You knew it was going full ahead? A. Yes. When I heard the telegraph knocking on the other side, I understood it was full astern.

Libelant's Exhibit 3
Deposition of Dmetrios Legakis

Q. What did you do? A. I opened a window, I saw the other ship like that. (Indicating)

Q. You saw the other ship when you looked out the window? A. Yes, I saw it very near. I ran down to the engine room, the collision happened and I went down and I saw the [53]engines continuing astern. When the telegraph ringing finished, I 'phoned to the engineer who was on watch, the weather is clear now, but don't close any steam on the reversing engine, and stand by also because maybe later we will have again fog.

Q. Have foggy weather again? A. Yes.

Q. When you looked out the porthole, Chief, and you saw the other ship, after you heard her going full astern, would you estimate the distance apart the two ships were? A. It was very near. I was surprised it was so near that the collision hadn't happened yet. It was very near. I left to go to the engine room. Before I could get there, the collision happened.

Q. You were washing your hands in your bathroom right underneath the telegraph, when you heard the bump and believed that it had bumped from full ahead to full astern? A. Yes.

Q. What did you do, finish washing your hands? A. I left right away.

Q. And looked out the window? A. Yes, looked out the window. When I saw the ships close together, I ran to the engine room. Before I came to [54] the engine room, the collision happened.

Q. About how many revolutions was your engine turning when you left the engine room? A. When I left the engine room it was just after a few seconds when the telegraph rang full ahead. He opens the steam and it started to work. Bye and bye the vacuum comes in place. It was stopped before to let the pilot off. Then after he left it

started to go up. As the vacuum goes up the revolutions increase.

Q. Do you know about how many revolutions you were turning just before the collision? A. It must be 65 or 68, near there. It was not full revolutions yet.

Q. What is full revolutions on your ship? A. At this time full revolutions are 72, 73.

Q. You were turning between 60 and 65? A. 65 to 68.

Q. Would you give us an estimate of your speed between 65 and 68? A. It must be 11 miles, because the revolutions is started, but the ship must go ahead to make headway.

Q. What speed do you estimate it was going just before the collision?

[55] Mr. McKown: I submit he cannot possibly estimate that standing washing his hands in his room.

A. It had not the full headway.

Q. You would not estimate the speed, then? A. No, because you must know many things to estimate. You must know the currents, how they go. If they are going with the ship, it is faster, if it is against the ship, it is slower.

Q. Did you estimate your speed at around 72 or 73 revolutions to be 11 miles? A. If the weather and the sea is all right, it goes 12 or 12½ on 72 revolutions.

Q. Was everything in good order and condition in the engine room at the time you left? A. Yes.

Mr. Dow: Nothing further.

Cross-Examination by Mr. McKown:

Q. Chief, what is the pitch of your propeller? A. 16 feet.

Libelant's Exhibit 3
Deposition of Dmetrios Legakis

Q. You say you left the engine room when you got a signal on the telegraph that the maneuvers were finished? A. Yes.

[56] Q. That is the FM 1:56 in the bell book? A. Yes.

Q. When you got back in the engine rom, what were the engines then doing? A. Full astern.

Q. Were they ever stopped? A. When the bell rung stop, then they started moving again.

Q. What was the next order you got after full astern? A. The next one was stop. The book, the telegraph rang stop and slow ahead. For that reason, because there was no time passing, in the book it is 2:10, slow ahead.

Q. Were you in the engine room when that order was received? A. Yes.

Q. But you were not in the engine room when the preceding order was written down there, right above the slow ahead at 2:10, is that right?

Mr. Dow: He already testified he was in his room.

A. Do you mean the preceding signal, 2:02?

Q. The entry at 2:02 which is right above the slow ahead at 2:10. A. I was in the engine room at 2:10.

[57] Q. But you were not down there at 2:02? A. No.

Q. How many speeds astern do you have on your boat? A. There is only one, and according to the steam they open —there is half ahead, half astern and full astern.

Q. On the opposite page you show an entry on the right hand column at 6:50. What does that symbol mean? A. Half astern.

Q. I show you a signal in the next column at 6:37. What is that? A. Full astern.

Q. What is this one? A. Full ahead.

Libelant's Exhibit 3
Deposition of Dmetrios Legakis

Q. That is a line with 3 lines above it at right angles? A. Yes.

Q. When you make a full astern order, do you not also draw a line and then put 3 lines through it? A. One line up and 2 after, just like that. (Indicating)

Q. Just like this full ahead at 4:04 on the right hand page, except that the up and down lines are at the other end of the line that runs across the page? A. Yes.

[58] Q. I notice this signal 2:02 has 4 lines, what does that mean? A. I don't know, the engineer who did that must explain. He explained to me that it is the time the collision happened. He didn't think of what he wrote. He thought that he wrote 2, but he said because of the confusion he wrote that.

Q. He put the extra line on for good measure? A. He put the other line without thinking.

Q. Is the 2:02 written in the handwriting of the engineer who was on watch? A. Yes.

Q. Do you know what was written there before something was erased and the 2 was written on top of it?

> Mr. Dow: I object to that question. There is no testimony or any evidence here that there were any erasures. This is the first time I have heard that word. Reframe your question and put it in the proper manner.

Q. Will you examine Exhibit 7 for identification and tell me whether there has not been an erasure where that second 2 in the 2:02 full astern is written? A. No.

Q. You say there has not been? [59] A. There has not been.

> Mr. McKown: I am sorry, Mr. Dow, but I will have to ask that this particular book be retained. In

the other cases I have been willing to accept photostats, but in this particular one I will just have to ask that it be retained.

(Discussion off the record)

By Mr. McKown:

Q. What I want to know—I am referring to the entry on the page that is marked Hellenic Beach 7—the entry on the top of the third column is a full astern order, you say, and after that it says "2:02". What I want you to tell me is whether the entire entry there is in the handwriting of the same man? A. Yes, I think it is. He is here and he will explain it.

Q. What is his name? A. Zaccas.

Q. How long, in time, do you think it was between the time that you heard the telegraph and the time of the collision, the last time you heard the telegraph and the time of the collision? I am referring to the time you heard the bump against one end. [60] A. I don't think more than a minute.

Q. As much as a minute? A. A minute, a minute and a half.

Q. I thought you said a few seconds, but I may have been wrong. A. A few seconds when I heard the telegraph and I went to the window and then I started running to the engine room. But that is only approximate.

Q. Is your best estimate a minute between the time you heard the telegraph and the time you heard the collision? A. Maybe more a few seconds, maybe less a few seconds. It is hard to say.

Mr. McKown: That is all.

(Witness excused)

———

Libelant's Exhibit 3
Deposition of Christos Stefanides

[67] CHRISTOS STEFANIDES, being first duly sworn by the Notary Public, testified as follows:

Direct Examination by Mr. Dow:

Q. Were you the second mate on the Hellenic Beach on June 5, 1949? A. Yes.

Q. Were you on watch at the time the ship was in collision with the Exmouth? A. Yes.

Q. What license do you hold? A. I have a chief officer's license.

Q. Greek? A. Greek, yes.

Q. How long have you been going to sea? A. 19 years.

Q. How long have you been an officer? A. 12 years.

Q. How long have you been on the Hellenic Beach? A. From the 18th of April.

Q. Of this year? A. Yes.

Q. I show you a book and ask you what it is? (Handing [68] to the witness). A. This is the log book of the ship; the chief officer's log.

Q. Who writes in this book? A. The chief officer, the second and third officers write in it.

Q. Each one keeps it on his own watch? A. Yes.

Q. I show you a page here and ask you if this is the page for June 5, 1949? A. Yes.

Q. Are these entries, beginning at the top of the page, which I take it is midnight, down past 2:46, are those entries in your handwriting? A. Yes.

Q. When did you write these entries in here? A. Until the time of the collision I was writing every time, the time

TIDAL CURRENT CHART

DELAWARE BAY AND RIVER

Red arrows show the direction and red figures the spring velocity in knots of the current at time indicated at bottom of chart.

This chart is designed for use with the predicted times and velocities of current for Delaware Bay Entrance (Overfalls Lightship). These predictions are contained in the Atlantic Coast Current Tables published in advance for each year by the U.S. Coast and Geodetic Survey.

Complete instructions are inside the front cover of this set of charts.

NOTE

Full predictions of the current in Chesapeake and Delaware Canal for every day in the year are given in the Atlantic Coast Current Tables.

Nautical Miles

1 ½ 0 1 2 3 4 5 6 7 8 9 10

MAXIMUM FLOOD AT DELAWARE BAY ENTRANCE.

A-3706-11(12)++

Lieutenant's Exhibit 5

Libelant's Exhibit 2

Σαββατον 4-6-49

Ρ SETTL. 7900

Ελληνικός Δ λέβητος, ατμοπαραγωγός
μεγάλης, καὶ μικρᾶς ξηρᾶς τροφοδ. ὕδατος.

Μηχανοδιαν 3½ ποδῶν
Ελαίου Η δέσμης μ 1½ "

Εξαγωγὴ ρ ἐφεδρίας Ρ Λέβητος

Ἀρχώρησις ἀπὸ Philadelphia

Συχνότης δονήσεων 4.15 π.μ

Ἀριθ Settl 7.100 χαμ

Προθέρμανσις μηχανῶν 4.35

Ξηρότης 65556274

Προσοχὴ 6.00

Ὥρα 8.00 π.μ Ξηρασμέτρ. 65563425

Ἀριθμ Ρ SETTL. 6500

8-12. Ξηρασμὸς ἀπὸ 65.792.80

Ρ settl. 5.500

6.05	8.22	12.55	2.02	3.02	X 11.39
X 6.06	8,23	1.00	2.10	X 3.04	11,42
6.07	10.44	1.07	2.10	3.05	11,48
6.08	11.12	1.12	2.10	X 3.07	12.10
6.10	11,48	1.33	X 2.14	X 3.09	12.44
6.16	X 12.00	1.37	2.18	3.09	12.50
6,33	12.03	1.43	X 2.34	X 3.49	X 12.52
6.41	12.14	X 1.51	2.35	4.02	
6.44	12.15	1.52	X 2.37	X 4.07	X
6.46	12.19	X 1.53	2.40	4.11	
7.10	12.26	1.55	X 2.50	4.15	
7.29	X 12.40	Fin 1.56			
7.34	12.45				

Φυλακή 12-4 Διανομή A. Settl τ.
Υποζύγιων · 4.750 χ.
Δρομολόγιο χ. 65584300
A. Settl 4.750 χ.

Κυριακή 5-6-49

Ώρα 4ην Αντιπαράταξις A SETTL υπολοίπων 4750
" 4.30 Συνταίρωσις A SETTL από Δε #3 έναντι 4750 δραμών 7000
Έξω δηλ. η συνταίρωσις από A #3 δραμών 12000

Ώρα 8.30 Δε SETTL 10200
Δρομολόγιο χ. 65601340
Α/Α Δρομολόγιο 65615490
Δε Settl. 9200

Μηχανολάων 4 βαλλόνια

Φυλακή 12-4 Εκκαπνιστήρ · Δε Settl. 8200 χ.
Δρομολόγιο χ. 65630600

Άγιος εἰς NEW YORK Έξαγωγή Δε ναυ Αλέβιτος
Σείριος Α Φάβιος

Μηχανήρ 4 1/2 χ.

4.01	Επιβίβασις ξυλείας					
4.04		4.26	6.15	× 6.30	6.50	
4.10		× 4.28	× 6.16	6.34	× 6.50	
4.16		4.31	6.17	× 6,34	6.57	
× 4.17		5.43	× 6.17	6.37	× 6.57	
4.22		5.46	6.20	× 6.37	6.52	
× 4.24		5.47	× 6.22	6.44	× 6.52	
4.24		5.49	6.24	× 6.44	Τέλος 653.	
× 4.25		6.05	× 6.24	6.46	Δε Settl 7.650	
		× 6.[illegible]	6.30	× 6.46	Σ[illegible]ον 65638134	

we passed a light or the time we let off the pilot, at the time of the collision, but after the collision, I wrote on a piece of paper and then I filled in the lines.

Q. There was a piece of paper attached to this log book which I have sent out to be photostated. Was that the piece of paper you first wrote on after the events occurred? [69] A. After the collision.

Q. You wrote that yourself and put it into the log book later? A. Yes.

Q. Where were you standing at the time you dropped the pilot? A. On the bridge.

Q. Have you the time there when you dropped the pilot? A. 1:52 a.m.

Q. Is that in your log book, too? A. Yes, 1:50, and 1:52 is full ahead.

Mr. McKown: 1:50 you dropped the pilot?

The Witness: Yes, and 1:52 is full ahead.

By Mr. Dow:

Q. What course did you set them? A. 124.

Q. This figure, 124, following 1:52, is the course, is that correct? A. Yes.

Q. The figure 134 that follows that is what? A. Magnetic compass.

Q. How long did it take after you dropped the pilot to get on the course of 124? [70] A. Two minutes. We left the pilot at 1:50 and 1:52 is the time we set the ship full ahead and we steered a course of 124.

Q. What were the weather conditions at that time? A. The seas were calm.

Q. What was the visibility in miles? A. About 4 or 5 miles.

Libelant's Exhibit 3
Deposition of Christos Stefanides

Q. Could you see Overfalls Lightship? A. Sure.

Q. Where did it appear? A. On the port side, maybe 60 or 70 degrees, not abeam.

Q. Did you see the green light of another vessel? A. Yes, I saw the green light and two mast lights, two white lights.

Q. How long after you dropped the pilot did you see that other ship? A. 2 or 3 minutes after.

Q. How much on your bow was she? A. About 3 points.

Q. Which bow? A. Port side.

Q. Did you watch your bearing? A. Sure, we watched.

[71] Q. Did the bearing change? A. No, the bearing became less.

Q. The bearing came more on the bow? A. Yes.

Q. Did you blow any whistles to her? A. Yes, we blew a whistle.

Q. How far away were you at that time? A. About half a mile, maybe.

Q. Did you get a reply? A. No reply.

Q. Did you blow any more? A. Yes. After about one minute and a half, we again blew one whistle.

Q. Did you get a reply to that? A. We had a reply, two blasts.

Q. What happened then? A. Then after one minute——

Q. After she replied with two blasts what happened? A. At the time we blew and we heard two blasts from her, the captain ordered the wheelsman to steer hard right and to set the engines full astern.

Q. Can you feel the vibrations of the engines going astern on the bridge? [72] A. Yes.

Libelant's Exhibit 3
Deposition of Christos Stefanides

Q. What kind of response did you get? How quickly did you get a response from the engines? A. About a second we got a response.

Q. You mean it was quick? A. Quick, very quick.

Q. Did the other ship appear to you to slow down or to change her speed in any way? A. I think not, no change.

Q. Did she seem to change her course from the time you first blew your one blast until the collision? A. No, no change in her course.

Q. You think—— A. She had the same course.

Q. The same heading? A. Yes.

Q. Where did you strike the other ship? A. No. 4, aft engine.

Q. You could see that? A. It was night, I couldn't see.

Q. You learned that later, you mean? A. Yes. I saw where we struck, but I don't know what damage it made.

[73] Q. Do you know whether you struck her in one of the holds or in the engine room? A. I know the strike was after the engine room in No. 4, but I don't know what damage there was.

Q. Did you attempt to find out the other ship's name after the collision? A. Yes, the captain put the searchlight on the stern of the ship and took the name of that ship.

Q. You saw that, too, did you? A. Yes, I was there.

Q. Where were you standing at this time? A. On the bridge, on the port side.

Q. Which bridge? A. Upper.

Q. Upper bridge? A. We always used the upper bridge.

Q. In navigating in close waters? A. Every time in winter and summer we navigate on the upper bridge.

Q. You never use the lower bridge? A. Never use it.

Libelant's Exhibit 3
Deposition of Christos Stefanides

Q. Could you estimate the speed of your ship at the time you blew the first one blast signal? [74] A. At the second——

Q. Can you estimate the speed of your ship at the time of the first one blast signal? A. No, we just left the pilot and there wasn't enough time to be full speed.

Q. Would you estimate the speed of your ship at the time of the collision? A. She had some speed, but not much.

Q. How much do you think? A. Maybe 4 or 5 miles, I don't know exactly.

Q. Immediately after the collision, did you receive any messages from any other vessel? A. Yes, from the pilot boat.

Q. How soon after the collision? A. Just after the collision.

Q. How soon? A. Maybe 2 or 3 minutes.

Q. What method of signalling was used? A. We used Morse signal, but also the wireless station—two operators, one on the bridge and one in the wireless station. We also used the searchlight, we used the Morse signal.

Q. Where is the Morse lamp? [75] A. The Morse lamp is on top of the second mast.

Q. On the top of the main mast? A. Yes.

Q. Who operated it? A. I can operate it and the captain, but at that time the captain operated it.

Q. Did the captain operate it? A. Yes.

Q. Not the radio operator? A. The first time, we took the name of the ship and the captain operated the light. After, the wireless operator.

Q. You mean it is a searchlight you have there? A. Yes.

Q. The searchlight also blinks? A. Yes.

Q. The captain turned the searchlight on the other ship? A. Yes, and took the name.

Libelant's Exhibit 3
Deposition of Christos Stefanides

Q. Then the radio operator—— A. He took the searchlight and made signals.

Q. Did you know what the messages were that passed back and forth between you and the pilot boat? A. The pilot boat asked if we had any need of assis- [76] tance.

Q. What did your ship reply? A. The captain replied that we are now examining damages. After the report came, we said we didn't need assistance.

Q. About what time was it or how much later after the collision was it that the captain had the radio operator signal back to the pilot boat that you didn't need assistance? A. After we examined the damage on the ship and we saw that there was no need to have assistance from the pilot boat.

Q. When did the fog shut in? A. The fog shut in about 2:30.

Q. Is that in your log book? A. Yes, 2:30.

Q. At any time after the collision, were you able to use your anchors? A. No, we couldn't use them.

Q. Did you see the other ship signal to you at any time after the collision? A. No.

Q. Did you see her signal to any other ship after the collision? [77] A. No.

Q. Did you see her lights at all after the collision? A. The lights after the collision were off, it was dark.

Mr. Dow: Your witness.

Mr. McKown: Are you producting the rough log that the witness has referred to?

Mr. Dow: Yes. I would like to offer the rough deck log to which the witness has referred and from which he has read as Hellenic Beach Exhibit 9 for identification.

Libelant's Exhibit 3
Deposition of Christos Stefanides

(Rough deck log of the SS Hellenic Beach marked Hellenic Beach Exhibit 9 for identification, as of this date.)

Mr. Dow: I ask that a photostatic copy be used in lieu thereof.

Mr. McKown: I am afraid I cannot stipulate a photostat on this, Mr. Dow. My eyes are not too good, but it does seem to me there are at least two places where to me it looks as though there were erasures. I may be quite wrong.

Mr. Dow: I can assure you, Mr. McKown, I have examined it very carefully, and I do not think, with the exception of something that occurred long prior [78] to the collision, that there is any erasure. But again, I will agree to produce the original.

Cross Examination by Mr. McKown:

Q. Mr. Stafanides, will you look at this entry on Exhibit 9. There is an erasure and change at 1:45, is that right? A. Yes.

Q. Do you remember what was there before? A. I don't know. There are two watches, the chart room and the other one.

Q. Which clock were you using for your entry? A. We were using the chart room clock.

Q. Was this book in the chart room? A. Yes.

Q. I also call your attention to the figures "2:02" there. It does look to me that there has been an erasure there. A. I always use my watch. Sometimes there is a difference in time between my watch and the chart room.

Q. I appreciate that, but do you remember whether you had something else written there and then wrote the "2" over it? [79] A. 2:03 it was, maybe, on my watch and

there was a difference in time and I corrected it with the chart room.

Q. You took the time of the collision on your wrist watch, is that right? A. Yes.

Q. Then you went in the chart room and you wrote down that time, is that right? A. I wrote it on a piece of paper.

Q. How about the time you wrote in the book here, Exhibit 9; was there something written under that "2:02"? A. Nothing.

Q. I want to get your testimony——

> Mr. Dow: He is trying, in this instance, to give it to you through the interpreter.

A. We use this book as a scrap book and we generally make corrections.

Q. I agree with that. All I am trying to find out is whether you did make a correction on this particular page of this particular book at that particular place, where it says "2:02"? A. It may be I corrected it when I saw the right time, that may be.

> Mr. Dow: The witness stated a moment ago, in [80] answer to a direct question, that he did not alter "2:02", as if it mattered any, and now, under the continuous pressure of Mr. McKown he says maybe there are some alterations there. But I submit it is argumentative and repititious.
>
> Mr. McKown: It is not argumentative.
>
> The Witness: I wrote the "2:02", and I did that at the time I wrote it.
>
> Mr. McKown: You said he wanted to make a correction through the interpreter and he then made

it and I understood the interpreter's answer to be that he said he is not sure whether he made it.

Mr. Dow: He said in other places in the log, not this particular place.

Mr. McKown: That was the question that was asked him.

Mr. Dow: The record will show what you asked him and what his reply was.

The Witness: Over here I corrected this.

By Mr. McKown:

Q. You did make the correction at 1:45? A. Yes.

Q. It seems to me that your testimony is quite clear [81] that at this point, where 2:02 is written, you may have written some time that you took from your watch and then corrected it by the chart room clock, isn't that right? A. Yes.

Q. Isn't that what you mean to tell us? A. Yes.

Mr. McKown: That is all.

(Witness excused.)

ANTHONY SPITHAS, being first duly sworn by the Notary Public, testified as follows:

Direct Examination by Mr. Dow:

Q. Were you the helmsman on the Hellenic Beach on June 5, 1949? A. Yes, I was.

Q. What seaman's papers do you hold? A. Able seaman, I may command a sailboat.

Q. Greek? A. Yes.

Q. How long have you been going to sea? A. 7 years.

Libelant's Exhibit 3
Deposition of Anthony Spithas

Q. How long have you been an able bodied seaman? [82] A. 2 years.

Q. Were you at the wheel of the Hellenic Beach when you dropped the pilot? A. Yes, I was at the wheel.

Q. After dropping the pilot, were you given a course to steer? A. Yes, the master gave it to me.

Q. Do you remember what the course was? A. 124 degrees.

Q. That is on the gyro compass? A. With the gyro.

Q. Could you see the lightship from where you stood at the wheel? A. We had it to our left. I could see it.

Q. Did you see the green light of another ship on your port bow? A. Yes, I saw the green light of another ship.

Q. How soon after dropping the pilot did you see that green light? A. Between 7 and 10 minutes.

Q. How was she bearing, at that time, on your bow? A. I cannot judge——

Q. How did she bear on the port bow, how many points, [83] degrees? A. About 30 degrees.

Q. Did your ship blow any whistle signals? A. We gave a blast the first time, one blast.

Q. Did you get any reply? A. They didn't answer to the first blast.

Q. Do you think you could have heard it where you stood at the wheel if they did answer? A. Surely, I would have heard it.

Q. Did your ship blow again? A. We received a reply to the second blast and at that time the captain ordered the movements, standby, astern and so on.

Libelant's Exhibit 3
Deposition of Anthony Spithas

Q. Do you know exactly what was done with the ship's engines? A. I felt the throbbing of the engine when she was reversing. The engines responded immediately.

Q. What signal did the other ship reply with to your second one blast? A. The other vessel gave two blasts and the captain gave an order to me to put full starboard.

Q. Did your ship's heading change when you put her full starboard? [84] A. I turned from 124 degrees to 150 starboard.

Q. What happened when she got to 150? A. Exactly at that point we had the collision.

Q. Can you tell if your ship was moving ahead or astern at the time of the collision? A. The engines were going astern, but the vessel still had some headway, some speed remaining, so it was moving ahead at some speed.

Q. Immediately after the collision, did your vessel use her searchlight? A. Yes, the master turned the searchlight on the vessel and read the name.

Q. Were you standing on the upper or lower bridge at this time? A. On the upper bridge.

Q. Where were the captain and the mate? A. Next to me.

Q. On the same bridge? A. On the same bridge, next to me.

Q. Did you see your ship signalling with the blinker light after the collision? A. The captain made signals. The captain was giving signals to the pilot vessel.

[85] Q. Who operated the blinker, the captain or somebody else? A. The captain started by turning the searchlight to the other vessel, and in the meantime, one of the radio operators came up and sent signals to the pilot boat.

Libelant's Exhibit 3
Deposition of Anthony Spithas

Q. When the captain ordered you to put your helm hard right, or hard starboard, did she respond properly, in your opinion? A. Immediately.

Mr. Dow: That is all.

Cross Examination by Mr. McKown:

Q. The first course you steered was 124? A. Yes.

Q. When the captain ordered hard starboard, was your vessel, at that time, still on 124? A. I had 124.

Q. With reference to the first one blast whistle that you blew, was that a good loud whistle? A. It was a good loud blast, it was the first blast, but it was a good loud blast, meaning we were going right.

Q. At the time that that first blast was blown, did you see the green light of the vessel with which you [86] collided? A. We could see it continually, that green light.

Q. When that first one blast was sounded by your vessel, how far away from your vessel do you think the green light was? A. Maybe one mile.

Q. At the time when you got the order hard starboard, at that time you could still see the green light, is that correct? A. I never lost sight of it, I saw it continuously until after the collision.

Q. At the time when the captain ordered hard starboard, how far away from your boat do you think the other boat was? A. Hardly less than a mile, because there wasn't much difference between the first blast and the second blast and the order to turn right. It was about a mile, hardly a mile.

Mr. McKown: That is all.

(Witness excused)

Libelant's Exhibit 3
Deposition of Anthony Theotocatos

ANTHONY THEOTOCATOS, being first duly sworn by the Notary Public, testified as follows:

[87] *Direct Examination by Mr. Dow:*

Q. Were you the lookout on the Hellenic Beach early of the morning of June 5, 1949? A. Yes.

Q. How long have you been going to sea? A. 9 years.

Q. How long have you been an able bodied seaman? A. 2 years.

Q. Do you have seaman's documents, do you have an able seaman's documents? A. Yes, I have.

Q. How long have you been on the Hellenic Beach? A. 13 months.

Q. What has been your position on the Hellenic Beach during that time? A. Sailor.

Q. Able bodied seaman or ordinary seaman? A. Able bodied seaman.

Mr. McKown: Would you give the Greek word that he used there?

Dr. Clinia: Naftis me ptychion.

Mr. Dow: What does that mean?

[88] Dr. Clinia: Certificated seaman.

By Mr. Dow:

Q. Were you on look out at the time you dropped the pilot? A. Yes, I was on lookout at that time.

Q. Where were you standing? A. At the forward end of the No. 1 hold.

Q. Was there any reason, particular reason, to stand where you did? A. I could see better from there.

Q. Did you see the lightship after you dropped the pilot? A. Yes, I could see it.

Libelant's Exhibit 3
Deposition of Anthony Theotocatos

Q. Did you see a green light or a colored light anywhe ahead of you? A. I could see a green light.

Q. Where did it bear? A. I cannot judge, but it wa to our left.

Q. Did you report it to the bridge? A. I did, but the had seen it already.

Q. Did your ship blow any whistles? A. It gave on blast at first.

Q. Did the other ship reply? [89] A. I didn't hea any response from the other ship.

Q. About how far away was the other ship, would yo judge, at that time? A. Just over half a mile, if I can judg right.

Q. Did your ship blow again? A. In one minute w gave another blast.

Q. Did you get a reply to that? A. Yes, the other vess gave two blasts.

Q. What did you do then? A. I drew myself a litt backwards, because I felt the vessel was standing to t right, our vessel was standing to the right, and I was e pecting something disagreeable.

Q. Where were you standing at the time of the col sion? A. Between the first and the second hold.

Q. Could you feel any change in the vibration of yo ship shortly before the collision? A. Yes, I felt the vib tions of our vessel.

Q. What did that mean to you, if anything? A. I f she was going astern. The vessel was vibrating like was going astern.

Q. Did you ever see the other ship's red light? A never saw the red light of the other vessel.

Libelant's Exhibit 3
Deposition of Anthony Theotocatos

Q. After the collision, what did you then do? [90] A. I awakened the sailors and we went forward to examine the damage.

Mr. Dow: That is all.

Cross Examination by Mr. McKown:

Q. You said you saw this green light. How long before the collision did you first see the green light? A. About 8 to 10 minutes.

Q. You say you reported it to the bridge? A. I reported it, but they had seen it.

Q. What did you say to the bridge, how did you report it? A. When we see a vessel to the right it is one bell, when it is to the left, it is two bells.

Q. Did you report this by ringing a bell? A. Yes, with a bell.

Q. How far were you from the bell? A. I was in front of the bell.

Q. How did you know that they on the bridge had already seen it? A. They were on the bridge and talking and I suppose they had already seen it.

Q. Did they answer you bell when you rang it? [91] A. They answered by mouth.

Q. Who answered? A. Whoever was on watch.

Q. Could you recognize the man's voice this time? A. I heard voices saying that there was a vessel to the left.

Q. That was after you rang the bell? A. Before. Because I went forward after I left the pilot.

Q. After the pilot left you, you mean? A. Yes, both.

Q. When you went forward, you heard them saying on the bridge that they already saw a green light off your left, is that right? A. Yes.

Libelant's Exhibit 3
Deposition of Anthony Theotocatos

Q. Did you continue to see that green light right down until the time of the collision? A. Yes.

Q. I think you said you did see the light vessel, was that right? A. I could see the light vessel, the weather was clear at the time.

Q. What lights did you see on the light vessel? [92] A. White, blinking.

Q. Did you see any colored lights of any vessel after you dropped the pilot, except this green light on the boat with which you were afterwards in collision? A. No other colored lights.

Q. Did you see any other white navigating lights? A. We could see the mast lights of the other vessel.

Q. The same vessel that was showing the green light? A. Yes, the same.

Q. The only lights you saw forward were the green light and the white mast lights and also the white light on the light vessel, is that correct? A. Yes.

Mr. McKown: That is all.

Redirect Examination

By Mr. Dow:

Q. Did you see any lights of any other ships around at that time? A. I didn't see lights of any other vessel. I saw the town lights. There is a town near there.

Mr. Dow: That is all.

(Witness excused)

(Depositions closed at 5:30 p. m.)

Note

Page 329 is on
Card 6

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JOHN T. FEY, Clerk

United States Court of Appeals

For the Second Circuit

No. 24518

HELLENIC LINES, LTD., as Owner of the s/s HELLENIC BEACH,

Libelant-Appellant,

against

s/s EXMOUTH, her engines, boilers, etc., and AMERICAN EXPORT LINES, INC.,

Respondent-Appellee,

AMERICAN EXPORT LINES, INC., as Owner of the s/s EXMOUTH,

Libelant-Appellee,

against

s/s HELLENIC BEACH, her engines, boilers, etc., and HELLENIC LINES, LTD.,

Respondent-Appellant.

APPENDIX FOR RESPONDENT-LIBELANT-APPELLEE-AMERICAN EXPORT LINES, INC.

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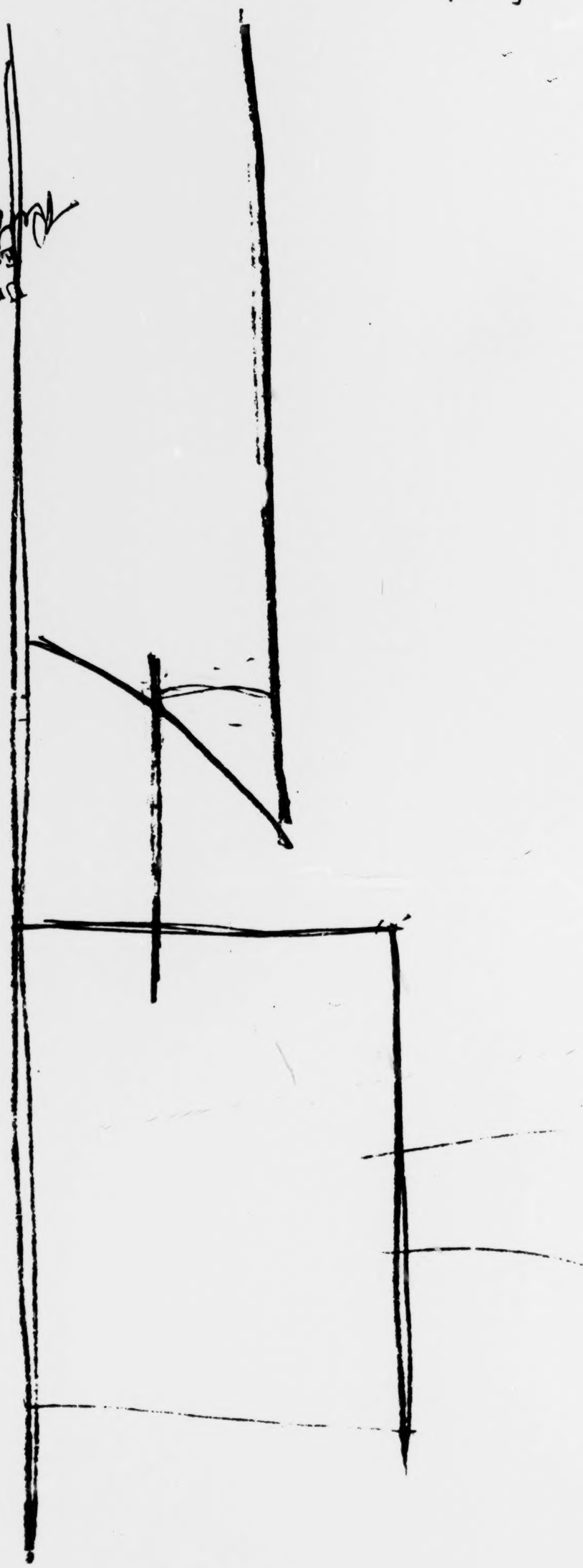
Respondent's Exhibit A

Sketch shown to Captain Macris of Hellenic Beach.

(See opposite ☛)

RESPONDENT'S EXHIBIT A

(p.3a)

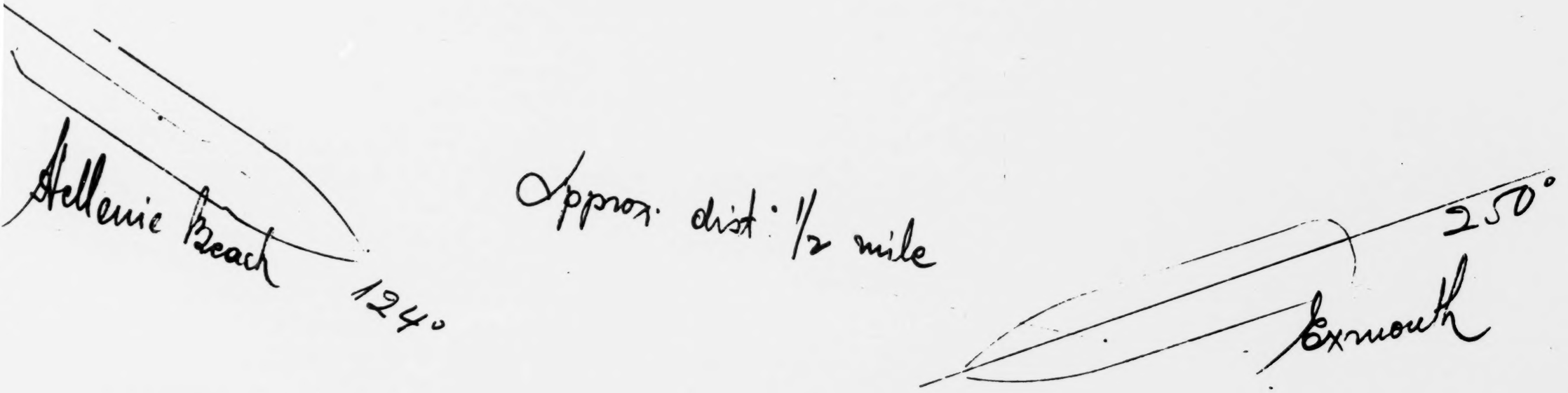


A-1944
1944 &c
United States District Court
Eastern District of New York
Exhibit A in evidence
Date 1/4/53
By Deputy Clerk

Respondent's Exhibit C

Sketch by Captain Macris.

(See opposite ☞)



RESPONDENT'S EXHIBIT C
(P.5a)

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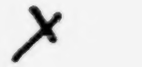
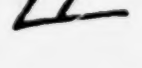
EXHIBIT 4
6/14/49 W.H.

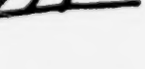
Approximate positions and bearing both vessels when first one blast signal blown

RESPONDENT'S EXHIBIT D

1.  STOP

2. SLOW AHEAD

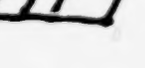
3.  HALF SPEED AHEAD

4.  FULL SPEED AHEAD

5. SLOW ASTERN

6. HALF SPEED ASTERN

7. FULL SPEED ASTERN

8. 

Respondent's Exhibit E

BERNARD G. LEIMERS, called as a witness on behalf of the defendant American Export Lines, having been duly sworn, testified as follows:

Direct examination by Mr. Estabrook:

Q. Mr. Leimers, are you a licensed officer of the United States Merchant Marine? A. Yes, sir.

Q. What license do you hold? A. Master.

Q. How long have you held a Master's license? A. 1945.

Q. And is that unlimited, any ocean? A. Unlimited.

Q. By whom are you employed? A. The American Export Lines.

Q. Are you now on vacation? A. Yes.

Q. What was your last position with American Export Lines? A. Chief mate.

Q. On what ship? A. The Exilona.

Q. How long have you been going to sea? A. 1929.

Q. How long have you had a license? A. 1939.

Q. How long have you sailed for American Export Lines? A. On a license, since '41.

Q. Before that you sailed as a sailor? A. Yes.

Q. For how long? A. About 3 years.

Q. For American Export Lines? A. Yes.

Q. Mr. Leimers, were you chief officer of the Exmouth on June 5, 1949? A. I think I was.

Q. You had been second officer, had you not? A. That's right.

Q. And you were chief officer for the run down the coast; is that correct? A. That is correct.

Q. At that time did you have a chief officer's license? A. I had a master's license.

Q. You left New York about what time, do you remember? A. No, not offhand; what time, no.

Respondent's Exhibit E

Q. Was it in the early afternoon? A. It was sometime in the afternoon, yes.

Q. And do you recall anchoring because of fog off Overfalls Lightship? A. Yes, we did anchor.

Q. In the evening? A. That's right.

Q. By the way, as chief officer, did you stand a watch on the bridge? A. No.

Q. Where were you when the ship anchored? A. On the bow.

Q. Were you in charge of letting go the anchor? A. In charge.

Q. What did you do after you anchored in the evening of June 4th? A. After we anchored?

Q. Yes. A. Why, I don't recall.

Q. Do you remember whether you went to bed or went on the bridge or went to the messroom? A. The chances are I went to bed.

Q. Now, in the early morning of June 5th, were you awakened to stand by the anchor? A. You mean when the ship was under way?

Q. No, before the ship got under way. You anchored, did you not, on the evening of June 4th? A. That's right, yes.

Q. And isn't it true that in the early morning of June 5th the ship got under way from the vicinity of Overfalls Lightship? A. That's right.

Q. And were you awakened to stand by the anchor? A. I had to go up there to heave up the anchor, yes.

Q. Who was up there with you; do you remember? A. Well, I had the boatswain up there.

Q. Did you have some sailors? A. Yes, there was a lookout was up there. I don't recall who else.

Q. Do you remember what the weather was like? A. Well, it had been foggy. That is why we anchored.

Q. And was the fog clearing? A. It was lifting, yes; that is why we got under way.

Respondent's Exhibit D

Engine room bell book symbols.

(See opposite ☛)

Respondent's Exhibit E

Q. How far could you see then? A. Oh, maybe 3 miles, 1 to 3 miles, I don't know.

Q. Did you have a watch up there, Mr. Leimers? A. No, sir.

Q. Now, after the ship got under way, did you see the lights of another vessel, which later turned out to be the Hellenic Beach? A. Yes, I did.

Q. What lights did you see? A. Well, I saw the port running light, that is, the red light, and the masthead light, and the range light.

Q. Where did the Hellenic Beach bear from the Exmouth? A. Approximately 4 points on the starboard bow.

Q. Four points is how many degrees? A. 45.

Q. And how far away was the Hellenic Beach? A. Oh, maybe 3 miles. That is a guess.

Q. Did you make any report? A. Yes, I reported the light to the bridge.

Q. How did you report it? A. By telephone.

Q. Did you get an answer? A. Yes, sir.

Q. Do you know whom you reported it to? A. The third officer.

Q. And is his name Giffin? A. That's right.

Q. At this time, where were you standing on the Exmouth? A. I was on the bow.

Q. What course was the Exmouth steering? A. Well, I don't know the exact course, but she was headed in towards the pilot station.

Q. Do you have a compass on the bow? A. No.

Q. Do you have any way of accurately determining the course on the bow? A. No.

Q. Did you pass the lightship, Overfalls Lightship? A. Yes.

Q. On which side? A. The lightship was on our starboard side.

Q. And how far off? A. About ¼ mile, ½ mile.

Respondent's Exhibit E

Q. That is your best estimate? A. It is my best estimate. I don't recollect.

The Court: You say about ¼ of a mile?
The Witness: About ¼ of a mile.

Q. As you passed the lightship, did you see the Hellenic Beach, or the lights of the ship which later turned out to be the Hellenic Beach? A. That was after we passed, yes.

Q. You saw them after you passed the lightship, not before? A. As far as I recall. I am not certain.

Q. You saw them when you thought you were about 3 miles off; is that correct? A. That is what I thought, yes.

Q. And you reported that to the— A. Bridge.

Q. —bridge. Now, how many times did you report that to the bridge? A. Once.

Q. After you passed the lightship, the lights were bearing about 4 points to the bow, were they, same lights? A. Yes.

Q. Did you notice any change in the bearing of those lights? A. No, I didn't. That is, it is hard for me to judge whether, from the bow, whether there is any change or not.

Q. What is the reason for that, sir? A. Well, being up there, you have nothing to orient yourself with.

Q. Now, describe what happened, in your own words, after you passed the lightship abeam. A. Will you repeat that, please?

Q. Will you describe, in your own words, what happened after you passed the lightship abeam? A. Well, at the time of picking up that light, I reported to the bridge. Well, then, there was nothing else that I could do there but to stand by until—

Q. You stood by to let go the anchor, if necessary? A. If necessary, yes.

Respondent's Exhibit E

Q. Did the bearing of the light change? A. No, not appreciably, not to my knowledge.

Q. Did the course of the vessel change, of the Hellenic Beach, or the vessel that afterwards turned out to be the Hellenic Beach? A. That I couldn't say.

Q. Did you hear any whistle signals? A. Not to my knowledge, I don't recall hearing any.

Q. Does that mean—well, let's first of all take the Exmouth; did you hear any whistle signals from the Exmouth? A. No, not to my knowledge.

Q. Did you hear any whistle signals from the Hellenic Beach? A. No.

Q. Where were you at the moment of the collision? A. I was still at the bow.

Q. At the moment of collision, what were you doing? Were you holding on or were you hanging on to the rail or the anchor chain? A. No, I was crouched down, because I saw we were going to have a collision, so it knocked me off my feet a little bit.

Q. Btu at the moment just before the collision, which way were you looking? A. At the moment of collision?

Q. Yes. A. I was looking at the ship, the Hellenic Beach.

Q. Where was the Hellenic Beach? A. Well, she was approaching us on the starboard side.

Q. And at what angle? A. Well, about 90 degrees, I should say.

The Court: About a right angle, wasn't it?
The Witness: About a right angle, yes, sir.

Q. Would you definitely state, sir, that there was no whistle signal blown at the moment of collision? A. No, I wouldn't state definitely.

Q. Would you definitely say there was none? A. Because during the confusion there, there may—I didn't pay any attention to—

Respondent's Exhibit E

Q. Would you definitely say there were no whistle signals blown up to about 15 seconds before the collision? A. I couldn't say.

Q. You don't remember hearing any? A. No.

Q. What did you do after the collision? A. Well, I went midships as soon as the collision, and there I met the bosun there. I sent him below just a few minutes, just a few minutes before that, and he was—had Mr. Rivera.

Q. And do you recognize Mr. Rivera here in court? A. Yes, I do.

Q. Where did you meet them? A. Right the forward end of the starboard alleyway.

Q. Then what did you do? A. Well, first I went to check to see that the purser was coming down to give aid to the injured.

Q. Was the purser also a pharmacist's mate? A. Yes.

Q. Is he in charge of the ship's first-aid kit? A. That's right.

Q. Then what did you do? A. Well, I took a look at the damage.

Q. Where was the damage? A. In the—well, the first part was evident in the messroom.

Q. Yes, then what did you do? A. Then I checked with the chief engineer to see if everything was all right down below

Q. Yes, was everything all right? A. Yes.

Q. Were the lights on or off? A. Well, it had gone off, but they brought them back on again. It was just momentarily.

Q. Then what did you do? A. Well, that is pretty hard to say. One thing, I had the cadets taking soundings; to lower the boats down to the rail; then I got orders from the bridge to anchor the ship. I anchored the ship; sounded the holds. The engineer started transferring fuel

and water to take the list off the ship. It listed over on its side, to bring the damage out of the water.

Q. Did you see Mr. Rivera? A. I beg your pardon?

Q. Did you see Mr. Rivera after you called for the purser? A. Yes, I saw the purser was taking care of him and I saw him just before they put him ashore.

Q. Was the purser competent, in your opinion? A. Very so, very much so.

Q. Did you make any suggestions to the purser as to how he should take care of Mr. Rivera? A. Well, I didn't —the only thing I did was tell him to give him a shot of morphine and pin an envelope on him so that the doctor who took charge of him later on would know that he had already had some.

Q. Did you observe where Mr. Rivera was? Was he on deck or in his room? A. No, we had him on a stretcher.

Q. And where was the stretcher, on deck? A. Yes.

Q. In your opinion, was that the proper place to have the stretcher? A. At that time, yes.

Q. What is your reason for saying that? A. Well, there was some question at the time whether we would have to abandon ship. If we had to abandon ship, we would have him in a position to lower him over the side.

Q. You say later on Mr. Rivera was removed from the ship? A. Yes, sir.

Q. How was he removed? A. He was taken off by the Coast Guard.

Q. Were you present at that time? A. Not at the actual lowering, no.

Q. Did you speak to the Coast Guard officer when he came on board? A. Yes.

Q. Did you make arrangements for Mr. Rivera to be taken to the hospital? A. Well, the Coast Guard took complete charge.

Q. Did you tell the Coast Guard that he was hurt? A. Yes.

Respondent's Exhibit E

Q. Did the Coast Guard tell you they would take him to the hospital? A. Yes, sir.

Q. In your opinion, was that the proper thing to do? A. Yes, sir.

Q. Who else was taken ashore at that time? A. The bosun.

Q. Did you pin an envelope to Mr. Rivera, indicating that he had had morphine? A. Yes—that is, the purser did it.

Q. You saw it was done? A. Well, I am almost certain he did it. I am not positive.

Q. You told him to do it? A. Yes.

Q. In your opinion, could anything more have been done for Mr. Rivera on board after the accident? A. No, just to ease his pain. That is the only thing we could do.

Q. And be sure he got to the hospital? A. Yes.

Q. Now during this time—by the way, did you make any entries in the ship's logs, as chief officer? A. Not personally, no.

Q. And you don't make any entries in the bell books, do you? A. No.

Q. Do you personally know of your own knowledge what orders were given to the wheel or to the engines of the Exmouth? A. No.

Q. How long did you stay anchored, do you remember? A. You mean after the collision?

Q. Yes. A. I think it was some time the next morning when we got orders, that is, that morning we got orders from New York to proceed to New York.

Q. Now, from the time you were called up on the bow to raise the anchor, until the collision, had you seen the master, Captain Ecklund? A. No, I didn't see him, no. He gave the orders, though.

Q. Well, did he give them to you personally, or through the third mate? A. Well, I was down on the boat deck at

the time and they shouted down from the bridge. I don't know who it was.

Q. Did you see the master after the collision? A. Yes.

Q. Where did you see him? A. Well, I—I don't recall where I saw him, but I—

Q. Do you recall seeing him at any particular time and place after the collision? A. Well, I saw him in the chief engineer's room.

Q. And do you know about what time that was? A. No, I don't.

Q. What was the master doing? A. I think he was using the telephone in there, I don't know.

Q. Did you observe his personal appearance? A. I beg your pardon?

Q. Did you observe his personal appearance? A. Well, he seemed a little tired, dazed.

Q. Did he appear to you to be intoxicated? A. No.

Q. Did you smell liquor on his breath? A. No.

Q. When did you next see the master, do you recall? A. No, I don't recall.

Q. Did you see him about 6 o'clock in the ship's office, in the morning; do you recall that? A. Yes, I saw him there.

Q. How did he appear at that time? A. Oh, I don't recall his appearance.

Q. Well, was he—did he to be alert? A. Well—I didn't see anything wrong with him.

Q. Was he tired? A. Well, I imagine he was pretty tired, yes.

Q. Did he appear to be dazed at all? A. Well, slightly, yes.

Q. Did you smell any liquor on his breath? A. No.

Q. What did you do in the ship's office about 6 in the morning? A. If I recall, we put some log entries, made some log entries.

Q. Did you make any? A. Not personally.

Respondent's Exhibit E

Q. What? A. Not personally, no.

Q. Who made them? A. I think the purser wrote them in. I am not sure. I couldn't say.

Q. You think the purser wrote something down? A. I am not sure.

Q. Before today, when was the last time you saw me or any member of my office? A. In June of '49.

Q. And have you discussed the collision with me or any person in my office from that time until today? A. No.

Mr. Estabrook: No further questions.

Cross-examination by Mr. Dow:

Q. Mr. Leimers, right immediately after the collision, didn't you testify before the Coast Guard hearing? A. Yes, I testified.

Q. And that testimony was under oath? A. That's right.

Q. On the question of drinking, would this refresh your recollection:—this is your testimony June 8, three days after the collision.

Mr. Estabrook: Will you give me the page, please, Mr. Dow?

Mr. Dow: Yes, page 229, first one.

Q. (Reading) "Was there any occasion to you that he had been drinking?"

The Court: "Was there any occasion to you"?

Mr. Dow: That is the way it comes out, your Honor. It is probably a stenographic error.

The Court: Probably "Was there any indication or evidence?"

Mr. Dow: Yes.

Respondent's Exhibit E

Q. Well, "Was there any indication to you that he had been drinking? A. Well, he may have had a drink or two.

"Q. Did he appear that way to you? A. Yes, he did."

Now, a little later in the same examination, the following question appears, on page 236:

"Q. I think you told us that the master appeared to have been drinking at the conference at 6 o'clock; is that correct? Did he appear any different to you when you first saw him in the chief engineer's room half-past two? A. No.

"Q. He was in the same approximate condition? A. Approximately, yes."

Do you remember that?

> The Court: I didn't hear the answer. Did you ask him a question?
>
> Mr. Dow: I asked him if he remembered that, and there is no answer.
>
> The Court: Yes. The question is whether you remember those questions having been put to you on June 8, 1949, at the Coast Guard hearing, and having given those answers to the questions so propounded?
>
> The Witness: Yes, I answered those questions at the Coast Guard hearing.

Q. You have testified here on direct examination that after you rounded the lightvessel you were about a quarter to half a mile away from her, that you saw a ship, red light and all, on your starboard side, about three miles away; is that correct? A. That's right.

Q. And she stayed on your starboard side? A. That's right.

Q. And you continued, as far as you know, straight ahead until you ran across her bow; is that right? A. I don't know. I couldn't tell you what course she was on or what she did.

Respondent's Exhibit E

Q. But the relative bearings of the two ships didn't change? A. Relative bearings were that.

Q. Now, at the time you rounded the lightvessel, at the time you swung around and rounded the lightvessel—and I show you a little drawing here. Let's assume this is the lightship—you were a quarter to a half mile off; right? A. As far as I can recall.

Q. And the Hellenic Beach was three miles away? A. Approximately. That is just an estimate.

Q. Now, the pilot vessel lay between the lightship and the Hellenic Beach, further north, didn't it? A. Yes, I think it did.

Q. You had lots of room in there, didn't you, at that time? A. Well, I didn't observe it from up there, in that respect.

Q. Well, is the answer yes or no? A. Well, I guess there is room enough to maneuver around. I don't—

Q. Well, yes or no, Mr. Leimers. Can you answer yes or no? A. I guess.

The Court: Guess what?

The Witness: I guess there was quite a bit of room there, yes.

Q. You are pretty sure of it, aren't you, Mr. Leimers? A. I beg your pardon?

Q. You are pretty sure there was, aren't you? A. No, I am not certain. I couldn't observe that all from the bridge, I mean, from the bow, because I was up there most—

Q. Did you see the master close enough to talk with him, from the time he was called, when the fog lifted it around 20 minutes after one in the morning, did you see him to talk to him, until after the collision? A. No.

Q. So his condition, alcoholically speaking, from 1.20—

Mr. Estabrook: I object to that remark.

Respondent's Exhibit E

Q. —from 1.20, until after the collision, you would have no active knowledge of it?

The Court: Don't answer the question.
The objection is sustained as to form.

Q. You wouldn't know then, would you, Mr. Leimers, of your own knowledge, the captain's condition between 1.20 a. m. and until sometime after the collision? A. All I know is that was he was on the bridge.

Q. No, but you didn't know his physical condition, did you? A. I knew he was on the bridge, yes.

Q. Did you know his physical condition during that time? A. Well, I didn't see him, no, because I went up on the bow immediately on being called.

Q. Well, just try to answer my questions as close as you can and we will save a little time. Did you know his condition between 1.20 and sometime after 2 o'clock? A. I didn't see him, no.

Q. So the answers you gave at the Coast Guard on his condition pertain to after the collision, is that right, rather than before? A. Well, yes, I wouldn't—I didn't see him before it.

Q. Yes. Now, did you get, aside from the order to anchor the ship, which you said somebody hollered from the bridge, around 3 o'clock, did you get any order from the master, from the time of the collision, shortly after 2, until sometime after 6.00 a. m.? A. I don't recall any.

Q. This collision was a rather serious one, wasn't it? A. Yes.

Q. So that except for the order to anchor, which you say came somewhere off the bridge— A. From the master.

Q. I think you said you were on the boat deck at the time; did you ever see the master between the collision and 6 o'clock? A. Yes.

Q. Whereabouts were you then? A. Well, I saw him once in the chief engineer's room.

Respondent's Exhibit E

Q. What time was that? A. I don't remember.

Q. Was it shortly after the collision, or shortly before ? A. Yes, shortly after.

Q. What was he doing there and what were you doing? A. I don't know.

Q. Well now, you mean you don't know what you were doing, but—or you don't know what he was doing? A. No. I was using the telephone in the chief engineer's room.

Q. Any idea what the skipper was doing there? A. No; perhaps doing the same thing.

Q. What? A. Perhaps wanted to see the chief engineer. That would be the logical conclusion.

Q. He was down in the engine room, wasn't he? A. Yes.

Q. Well, when you came in at that time, did you find him there? A. The captain was in there, yes.

Q. What was he doing? A. I don't know.

Q. Well, I mean— A. I didn't ask him.

Q. Was he standing there, was he lying in the chief engineer's bunk? A. No, he was standing by the telephone.

Q. Had he been using it? A. I don't know.

Q. Well, you just had a very serious collision, and your general alarm? A. All I can do is assume he was going to call the chief engineer. He perhaps came down here to see him, thinking that he might be there.

Q. This was a rather serious time, wasn't it? A. Yes, it was.

Q. For you both? A. Yes.

Q. You just had a very serious collision; right? A. Yes.

Q. You weren't certain of the condition of your ship yet, were you? A. That is what I was calling the chief engineer for.

Q. To find out? A. How his plant was, yes.

Q. That's right; and as far as you know, the captain didn't know the condition of the ship either; is that right? A. I don't know.

Respondent's Exhibit E

Q. Well, didn't you talk together at that time? A. Yes, I spoke to him.

Q. Well, what did he say to you and what did you say to him? A. I don't recall.

Q. Sure? A. I don't recall.

Q. You don't even recall what you talked about? A. No.

Q. Well, you weren't telling funny stories, were you? A. No, that is for sure.

Q. But you don't remember—did the captain give you any orders at that time? A. No.

Q. Well, from your testimony I read a few moments ago, "Did he appear any different to you than when you saw him in the chief engineer's room at half-past two?" The answer was "No." Mr. Leimers, there wasn't any point in talking to the captain then, was there? A. I beg your pardon?

Q. There wasn't any point in you and the captain having any conversation then, was there?

Mr. Estabrook: I object to the question.

The Court: I will allow the question.

A. Well, I spoke to him. Naturally there is a point, but I don't recall just exactly what I said. That is three years ago.

Q. But you would have recalled it much better on the 8th of June 1949, wouldn't you, three years ago? A. I suppose I would have.

Q. Now, immediaetly after the collision, which on your ship's time was 2.05, did your vessel, to your knowledge, send any messages to anybody immediately afterward, either the Coast Guard— A. Yes.

Q. She did, and to whom and when? A. We sent a message to the port captain in New York; Coast Guard was notified. I don't know what time.

Q. Well, that is what I am trying to get at. Didn't the radio operator come to you after the collision and tell you

that he had been trying to get the captain to send a message to the Coast Guard, that the purser had seen him about the injured man, and that the old man wouldn't send one out, and kept saying, "No, let's wait and see"? Didn't he tell you that? A. I don't recall.

Q. That was Mr. Roos, the radio operator? A. Yes, I know him.

Q. He was a good man, wasn't he? A. As far as I know.

Q. You don't recall speaking to the radio operator on at least two occasions about that? A. Yes, I spoke to him, certainly.

Q. What? A. As we sent the message.

Q. Yes. Eventually you authorized the message, didn't you? A. I have got the okay from the captain. We wrote the message and he okayed it.

Q. Well now, didn't you just tell us that from the time you saw the captain in the chief engineer's room, at 2:30, you never saw him until six o'clock? Didn't you just tell us that? A. I don't know what time it was.

Q. As a matter of fact, the radio operator couldn't get an answer out of the captain, could he? A. I don't know.

Q. Well, he told you that, didn't he? Let me see if I can refresh your recollection. Didn't Mr. Roos tell you that he had said to the captain—

Mr. Estabrook: What page is that, Mr. Dow?

Mr. Dow: 240.

Q. (Reading) "Captain, you had better notify the Coast Guard. It is the proper thing to do." And he said, "No, let's see what happens." A. That I don't know.

Q. Now, you testified that was four minutes after the collision—

Mr. Estabrook: Your Honor, I move that that be stricken out and the jury be instructed to disre-

gard it. Mr. Dow is not reading from any testimony of the witness.

Mr. Dow: I am, page 240.

Mr. Estabrook: But from testimony of the radio operator.

Mr. Dow: Of course, later on the radio operator testified he told this man these things.

The Court: The motion to strike is granted, but the objection should have been made earlier.

Mr. Estabrook: Yes, your Honor, I tried to get it, but Mr. Dow read it to me.

The Court: Please disregard it. It is a hearsay statement.

Mr. Estabrook: I respectfully move for a mistrial.

The Court: Motion denied. Your place was to object at the proper time. The jury will please disregard the question and the answer which was referred to just a moment ago, which relates to the radio operator, who is not on the witness stand.

Mr. Dow: On page 243—

The Court: Whose testimony are you now reading from?

Mr. Dow: This is the testimony of the radio operator concerning the chief mate, where he ties up—

Mr. Estabrook: I object to this.

Mr. Dow: —where he ties up previous conversations.

The Court: Now, please don't make any statements, Mr. Dow.

Mr. Estabrook: I again move for a mistrial, your Honor.

The Court: Would you allow me to finish my sentence, sir?

Mr. Estabrook: Excuse me.

Respondent's Exhibit E

The Court: Put a question, and if opposing counsel has any objection, please wait until I rule on it.

Mr. Dow: Very well.

Let me see if I can do it without reading it here.

The Court: I tell you now that I will not permit any questions as to alleged conversations between the radio operator and the captain, so please do not ask any.

Now, if you have any testimony there given by this witness, which you say contradicts his present testimony or may serve to refresh his recollection, you may put those questions.

Mr. Dow: Yes, sir.

Q. You went down in one of the boats, didn't you, Mr. Leimers? A. No, sir.

Q. You didn't? A. No, sir.

Q. Well, you went down to the boats on the boat deck then, didn't you? A. Supervise the launching, yes.

Q. And do you remember the radio operator coming up and speaking to you at that time? A. No, I don't: I don't recall.

Q. Do you recall the radio operator asking you to urge the master to send some message out, and you telling him that you would do it; do you remember that? A. Well, we sent the message. The point is, the message was sent.

Q. Yes, that's right, but it took quite a bit of doing, didn't it, Mr. Leimers? A. Well, I wouldn't say that.

Q. The message—well, Mr. Leimers, do you know the time that message finally went out? A. No, I don't.

Q. Have you any way of finding that? A. No, I haven't.

Q. It wasn't done right away, was it? A. Well, I don't —not exactly right away, no, that is—

Mr. Dow: Let me have your logbook, please, Mr. Estabrook.

Respondent's Exhibit E

Q. (Handing) Look in here, Mr. Leimers, and tell me when the Coast Guard came aboard. A. This is the engineer's book. I am sorry.

Q. All right (handing another logbook to witness). A. (After examining) 4:08 is the time.

Q. And when was the collision? A. (After referring to logbook) At 2:05.

Q. Now, does that, Mr. Leimers, refresh your recollection as to what happened in those two intervening hours? A. Well, not a great deal, no. It just tells me the times the Coast Guard came alongside.

Q. Isn't it true that from the time the Coast Guard was called until they were alongside was less than twenty minutes? A. That I don't know.

Q. Did you finally authorize that message? A. No, the master authorized it.

Q. Now how do you know that, Mr. Leimers? A. That is to the best of my knowledge.

Q. What do you base it on? A. I don't send messages without the master's approval.

Q. Sir? A. We wouldn't send the message without the master's approval.

Q. Well, you don't know of your own knowledge if the radio operator and the purser ever obtained that approval, do you? A. No, I showed the message to the master.

Q. Well now, you remember, of course, that you recently, just testified, that you didn't see the master between half past two and six. I suggest to you that this message was finally sent at 3:44; does that refresh your recollection? A. No, not—I wouldn't know what time it was sent.

Q. Well, I mean, actually, Mr. Leimers, you don't remember getting any approval from the master, do you, you yourself? A. No, I am pretty sure that that was—that that was approved by the master, though.

Q. But you have no recollection of it, have you, Mr. Leimers? A. Well, that is three years ago. I wouldn't know.

Respondent's Exhibit E

Q. You would have remembered a lot better three years ago, wouldn't you? A. Possibly.

The Court: I think we will take our mid-afternoon recess at this point.

(Short recess.)

The Court: All right, Mr. Dow.

By Mr. Dow:

Q. Mr. Leimers, shortly before, or about six o'clock that morning, about four hours after the collision, were you in your room with some of the other officers? A. I could have been.

Q. At that time didn't you receive a call to come to the master's room, all of you? A. I believe so, yes.

Q. What was the purpose of that? A. To write up the log.

Q. The purser was there? A. I think so.

Q. He took the notes down, didn't he? A. I think so, yes.

Q. I mean, you are quite sure, aren't you, Mr. Leimers? A. Yes, I am pretty sure he did, yes, sir.

Q. And while you were all in there, you and third mate and the purser, and I think there was the junior third mate, didn't the second mate, Mr. Cassetti, come in and speak to you for a moment? A. He may have. I don't recall.

Q. Well, would this refresh your recollection: when he came in and the captain was sitting by his desk, didn't he ask Mr. Cassetti if he had been on watch at the time of the collision, and didn't the third mate say, "No, it was me"? A. Not that I recall.

Q. Well— A. No, I don't remember that.

Q. Do you remember very much about the meeting at all? A. Well, I know about the accident, sure, general.

Respondent's Exhibit E

Q. And that is the first time the logbook was written up, isn't it? A. Yes, I think so.

Q. Did the captain ever come down to see Mr. Rivera after the accident? A. I don't believe so.

Q. Did you drink at all on this trip, Mr. Leimers? A. No, sir.

Q. You are sure of that? A. I had—

Q. Sir? A. I think one drink after the accident.

Q. You are sure you didn't have more? A. That's right.

Q. Do you remember your testimony before the Coast Guard, on page 230:

"Q. Didn't have anything to drink on the way from New York until the time of collision? A. I had about two drinks the whole trip.

"Q. With whom? A. I had a drink with a member of the crew after the accident."

Do you remember that? A. That's right, yes.

Mr. Dow: That is all.

The Court: Mr. Estabrook, any redirect?

Mr. DeVarco: No questions.

Redirect examination by Mr. Estabrook:

Q. Mr. Leimers, you testified before the Coast Guard on June 9th, did you not? A. Yes, sir.

Q. And you were recalled again, I believe, on June 11th, were you not? A. I think it was two days, yes.

Q. At that time did you know that the master was suffering from what was diagnosed by the Public Health Service as a concussion of the brain? A. No, sir; I did not know it.

Mr. Estabrook: No questions.

Recross-examination by Mr. Dow:

Q. Did you see any lumps or bumps on the captain's head? A. I didn't examine his head.

Respondent's Exhibit E

Q. Did he complain to you about any lumps or bumps or require any treatment by the purser? A. No, sir.

Mr. Dow: That is all.

The Court: Would you step down to the blackboard, please—the witness.

(Witness leaves stand and goes to blackboard.)

By the Court:

Q. Do you recognize the diagram on the lefthand blackboard, the one in front of which you are now standing, at least recognize the symbols? A. Yes, I think I do.

Q. Now, using a different colored crayon, will you indicate at what point your ship was at when you heaved the anchor? A. When I what?

Q. When you heaved up the anchor. A. You mean at what time we heaved it up prior to the accident?

Q. Well, it had to be prior. A. Yes, that's right.

Q. Now, for your information, in case you are not altogether sure of the symbols there, that "H. B." up in the lefthand corner is the Hellenic Beach. A. This one up here.

Q. The one in the lower corner, without any symbol, is supposed to be the Exmouth, and the one in the middle, a little below the indication of "north" is the lightship. Is that what you call the Overfalls light vessel? A. Overfalls, yes, sir.

Q. All right. You don't have to accept those symbols indicating the different points at which you were during the time, commencing with the heaving up of the anchor until the point of contact with the Hellenic Beach, but at this point indicate where your ship was when the anchor was heaved. A. We were out here some place, Judge, some place right here (indicating).

Respondent's Exhibit E

Q. Well, indicate that. What time do you say that was? A. What time?

Q. Yes. A. That I couldn't tell you. That is in the logbook. I can look it up.

Q. Well, in any event, you are started now; is that right? The fog has lifted and the anchor is up and you are on your way. A. Yes.

Q. Now indicate in what direction you went. A. (After indicating on board) This way.

Q. Now, go ahead; continue as you are indicating with those broken lines, as you started. A. (Witness indicates.)

Q. Now, where is the first point which you observed the Hellenic Beach? A. Well, we passed this light vessel, and I would say it was approximately over here (marking on board).

Q. In other words, at no time, up to the moment you were abeam the lightship, had you observed the Hellenic Beach? A. Not to my knowledge, no, sir.

Q. I am speaking of your own observation? A. No, I hadn't, no.

Q. And where were you from the time you heaved up the anchor? A. I was on the bow of the vessel.

Q. And under ordinary circumstances, if a light were in sight, you were in a position to make an observation; isn't that correct? A. I was—yes, in order to see, but not to establish bearings or anything like that.

Q. Well, in any event, you were going in a westerly direction? A. Yes, sir. We came down from the other lightship and was at anchor some point. I couldn't tell you the exact distances.

Q. Pardon? A. I couldn't tell you the exact distances.

Q. Well, you are past the Overfalls lightship vessel. A. Yes, sir.

Q. Is that right? A. Yes.

Q. Up to the point you came abeam of the Overfalls lightship vessel, did you see the port light of the Hellenic Beach? A. No, sir.

Respondent's Exhibit E

Q. Where is the first point from which you observed the port light of the Hellenic Beach? A. It was some time after passing Overfalls.

Q. Some time? A. It was up in this position here (indicating).

Q. Now, from the position in which the Exmouth was, which was the burdened vessel and which was the privileged vessel? A. In clear weather, it would be the Exmouth would be the burdened vessel, under the rules of the road, in a crossing situation.

Q. Well, is there any doubt that this was a crossing situation? A. Yes—I think the rule is—special rule is—special rule of special circumstances applied, more or less.

Q. Well, absent special circumstances, in clear weather or foggy weather, which was the burdened vessel and which was the privileged vessel? A. In clear weather I would say the Exmouth was the burdened vessel.

Q. And the Hellenic Beach was the privileged vessel? A. Yes, sir.

Q. And wasn't this clear weather? A. Well, visibility wasn't too good.

Q. Now you still haven't answered my question. How far away from the Hellenic Beach were you when you first observed its port light? A. Well, anywhere from one to three miles.

Q. You say at no time did you hear any blast, either on your vessel or on the Hellenic Beach? A. No, sir.

Q. Now, will you indicate on the board the precise point at which you were, which you say is one to three miles from the Hellenic Beach, when you first observed the port light? A. Well, this is about where I think it is (indicating).

Q. And where was the Hellenic Beach? A. Approaching us at an angle, about 45 degrees. At least that is where I saw her, the red light.

Respondent's Exhibit E

Q. That is a crossing situation, is it not? A. Yes, sir.

Q. Now, under ordinary circumstances and barring exceptional circumstances, to which you refer, what would be the course of the Exmouth normally, according to the rules of the road, would be required to pursue? A. Either to pass astern or in case they could, they could pass clear across.

Q. Now, indicate what you mean. Indicate to the members of the jury what you mean by "passing astern"? A. Well, they could have swung this way to pass astern, or it could have swung this way and then passed ahead, in order to have clearance there, unless they were too close.

Q. Well, the burdened vessel, is it permitted to cross in the second direction that you just indicated? A. Well, it could cross her if it had proper clearance, either way.

Q. When you say "it could cross her," you mean continuing in the same direction in which it was going? A. That's right.

Q. Rather than going astern? A. Ordinarily, it passes astern.

Q. Well, don't the rules of the road require that it pass astern in a situation in which you found yourself? A. Just requires that it keeps clear.

Q. Well, either pass astern or keep clear? A. Yes, sir.

Q. And does "keep clear" mean going forward? A. If you have sufficient room, yes, sir.

Q. As a matter of fact, that is what the vessel really did in this situation, went forward, did it not? A. I think so, yes, sir.

Q. It didn't go astern? A. No.

Q. And you are sure you didn't hear any blast from the Hellenic Beach at all? A. Yes, sir: I am positive of that.

Respondent's Exhibit E

Q. And you are also positive you didn't hear any from your own ship? A. Not to my knowledge, no.

The Court: All right.

By Mr. DeVarco:

Q. One question, Mr. Leimers: When your vessel was at this point, east of the Overfalls lightship, what prevented the vessel going up north and then over towards the pilot ship; in other words, staying on the easterly side of the Overfalls lightship? A. Well, I don't know how that water there is. I would have to look at a chart. I don't know whether they can pass on that side.

Q. Let's look at a chart. A. It is customary to round it on the southern side.

The Court: Before we leave that, I would like to ask you a question, before you go back to that.

The Witness: Excuse me.

By the Court:

Q. At the point of contact, were you in inland or were you in international waters, according to your observation? A. We were in, just about in the boundary of inland waters.

Q. Boundary where? A. Boundary between international and inland.

Q. You mean you were in neither then; you were in both? A. Well, just about at the dividing point between the two.

Q. Where was the Hellenic Beach when you first observed the port light? A. Well, I assume she was coming from the pilot station.

Q. I mean, was it in inland waters or in international waters? A. I think she was in inland waters.

Respondent's Exhibit E

The Court: Are counsel by any chance in agreement as to where the point of contact was, whether it was international waters or otherwise? And I want no discussion, only if you are in agreement, that is all I want to know. Now, you can confer privately on that.

(Mr. Dow and Mr. Estabrook confer.)

The Court: I would say, unless I misapprehended some point, the only significance is really with respect to the evidence of the one blast. Otherwise the rules are the same.

Am I wrong about that, counsel?

Mr. Dow: Yes, sir.

The Court: I am wrong about it?

Mr. Dow: No, sir; you are right.

Mr. Estabrook: Mr. Dow and I agree to that.

The Court: Off the record.

(Discussion off the record.)

Mr. Dow: We agree that the collision occurred in international waters, I say about 300 yards, Mr. Estabrook says, no, it is about 500 yards.

The Court: Well, it doesn't make any difference. It occurred in international waters.

Now, I take it there probably is no agreement with respect to the position of the Hellenic Beach at the time claim is made of the giving of the two signal blasts?

Mr. Dow: Say that again, your Honor?

The Court: Is there any agreement as to the position of the Hellenic Beach when it was claimed that the single blasts were given?

Mr. Dow: We say about a quarter of a mile, the two ships were about a quarter of a mile apart.

Respondent's Exhibit E

The Court: No, whether the Hellenic Beach was inland at the time?

Mr. Dow: The first one, there is no question about it, I think you will agree.

Mr. Estabrook: No, I can't agree.

The Court: I said I took it there was no agreement. I think I am right.

All right, at least we are in agreement as to the point of contact.

By Mr. DeVarco:

Q. Will you please, Mr. Witness, answer my question as to, after looking at the chart, if you will, whether there is sufficient deep water? A. There was sufficient water to go close to the light, but it takes you off your normal course and out of the way, out of our way toward the pilot station.

Q. But it can be done? A. It could be done if you swung close, yes.

Mr. DeVarco: All right, no further questions.

Recross-examination by Mr. Dow:

Q. Am I correct, Mr. Leimers, at the time you first saw the Hellenic Beach she was about three miles away? A. Approximately. That is just a guess.

The Court: He said one to three, as I understood him.

Mr. Dow: Sir?

The Court: Did you say three, or one to three?

Mr. Dow: Three.

The Court: When you first saw it?

The Witness: Well, I don't know. It was between one to three miles.

The Court: That is what he said before. I understood him to say that before.

The Witness: That's right.

The Court: All right, you are excused, unless you have other questions, sir?

Mr. Dow: No, I don't.

I would just like to point out to your Honor—

The Court: Well, we will excuse the witness first.

All right, Captain, you are excused.

(Witness excused.)

Respondent's Exhibit F

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NEW YORK

In Admiralty No. 19244

HELLENIC LINES, LIMITED, as owner of the SS HELLENIC BEACH,

Libelant,

vs.

STEAMSHIP EXMOUTH, her engines, boilers, et cetera, and AMERICAN EXPORT LINES, INC.,

Respondents.

Deposition of Bernard E. Giffin, taken before Mary B. Alfriend, a Notary Public for the State of Virginia at Large, pursuant to notice, at the offices of John W. Oast, Jr., Citizens Bank Building, Norfolk, Virginia, April 23, 1952, at 10:00 o'clock A. M., to be read as evidence on behalf of the libelant in the above-entitled cause, pending in the United States District Court for the Eastern District of New York.

Appearances:

MESSRS. DOW & SYMMERS (by MR. DAVID H. BATCHELDER, JR.) and MR. JOHN W. OAST, JR., proctors for the libelant.

MESSRS. HAIGHT, DEMING, GARDNER, POOR & HAVENS (by MR. JAMES M. ESTABROOK) and MESSRS. HUGHES, LITTLE & SEAWELL (by MR. THOMAS M. JOHNSTON), proctors for the respondents.

Respondent's Exhibit F

STIPULATION

It is hereby stipulated and agreed by and between the proctors for the respective parties hereto that filing, sealing and certification of the within deposition be and hereby are waived; that all objections except as to form are reserved to the time of the trial; that the stenographer's fees for the original and two copies are to be taxable, one copy to be supplied to the proctors for the SS Exmouth.

(At this point there was an off-the-record discussion, after which the following occurred):

Mr. Estabrook: On the record, I offer to stipulate that while we cannot waive the signing of the transcript of this deposition, we will stipulate that it may be signed not only before the reporter but before any notary public or other officer authorized to execute oaths.

Mr. Batchelder: I am willing to enter into that stipulation provided that the deposition be signed within a reasonable time after notification to the witness that the deposition is ready for signature.

Mr. Estabrook: That is satisfactory.

Mr. Batchelder: Is that a stipulation that you can enter into?

Mr. Estabrook: Yes.

Mr. Batchelder: When the reporter has prepared the deposition and it is ready for signature, she is to notify Mr. Thomas M. Johnston, of Hughes, Little & Seawell, 936 Wainwright Building, Norfolk, Virginia.

BERNARD E. GIFFIN, called as a witness on behalf of the libelant, and having been first duly sworn, testified as follows:

Examined by Mr. Batchelder:

Q. Your name, please? A. Bernard E. Giffin.

Q. Where do you live? A. Home address, 474—5th Street, San Pedro, California.

Respondent's Exhibit F

Q. By whom are you employed? A. American Export Lines.

Q. In what capacity? A. Third officer.

Q. On what ship? A. Mayfield Victory.

Q. In June of 1949, were you on board the SS Exmouth? A. '49? Yes.

Q. And that vessel is owned by whom, or was owned by whom? A. She is owned by American Export Lines.

Q. And in what capacity were you employed on that vessel? A. Third Officer. Also Junior Third.

Q. You held both? A. Yes, sir.

Q. You have held both ratings on that vessel? A. Yes, sir.

Q. How long had you been aboard the SS Exmouth prior to June 1949? A. I can only estimate the time.

Q. Please. A. Approximately seven months.

Q. How long had you been employed by American Export prior to June of 1949? A. Since June of 1946.

Q. Have you been employed by American Export since June of 1949 up to the present time? A. Yes. I am now.

Q. Continuously? A. Yes.

Q. What license do you hold? A. Second Mate.

Q. Have you been employed by American Export as a Second Mate? A. No.

Q. Have you been employed since June of 1949 by American Export only as a Third Officer? A. No. Since then I have been Junior Third Officer also.

Q. What vessels have you been employed on since June of 1949? A. The Express, as Junior Third; the Explorer as Junior Third; and the Mayfield Victory, as Third Mate.

Q. And that has been pretty constant employment? A. Oh, yes.

Q. You have taken leaves at various times, but other than that you have not been on the beach? A. That is right.

Respondent's Exhibit F

Q. Were you on board the SS. Exmouth at the time she was in collision with the SS. Hellenic Beach near Overfalls Light June 5, 1949? A. I was.

Q. And where were you aboard the vessel at the time of the collision? A. I was on the bridge.

Q. Were you on watch? A. On watch.

Q. When had you gone on watch? A. At midnight, twelve midnight.

Q. And what was the vessel doing at the time you went on watch? A. At that time, the vessel was at anchor.

Q. And what were your duties when the vessel was at anchor, or what duties did you perform when you went on watch? A. Well, I would say routine anchor watch.

Q. Where did you station yourself when you went on watch? A. On the bridge.

Q. Could you describe your routine anchor watch just briefly? A. Well, whenever possible, we should check our anchor bearings, see that the vessel is secure.

Q. You checked the lights, anchor lights? A. Well, of course.

Q. And did this collision occur when you were under way? A. Yes. We were under way.

Q. And when did you get under way? A. Well, I cannot recall the exact time. I would say about half-past one.

Mr. Estabrook: Mr. Batchelder, I have, if you care to use them, the logbook and the bellbook of the Exmouth.

Mr. Batchelder: I was just about to suggest that I have a photostat which you furnished me of both the bellbook and the deck log, which I will offer for identification.

(The photostat referred to of the rough deck log was marked Libelant's Exhibit 1 and the photostat referred to of the deck bellbook was marked Libelant's Exhibit 2.)

Respondent's Exhibit F

By Mr. Batchelder:

Q. I believe you testified that you got under way at 1:30. Was that correct, after you have reviewed the log? A. After seeing the log, no. It is not correct. We commenced heaving the anchor at 1:42 A. M.

Q. And when was the anchor two-blocked? A. The anchor was away at 1:51.

Q. Would you look at the deck bellbook and tell me what time the first order was given to the engine room after the anchor was away. A. The first order to the engine room after the anchor was away was 2:05. That was "Stop."

Q. Then, when was the next preceding order given to the engine room? A. At 1:51.

Q. What was that order? A. "Full speed ahead."

Q. And you believe that was given before the anchor was away? A. That was given at the same time the anchor was away.

Q. Did you give that order on the telegraph? Did you operate the telegraph? A. I operated the telegraph, yes. I did not give the order.

Q. No, but you operated the telegraph manually to give that order to the engine room? A. Acting upon orders, I did.

Q. And did you get a response from the engine room? A. Yes.

Q. Did you have reason to believe that the engine room had been notified that the order was to proceed full speed?

Mr. Estabrook: I object to the form of that question.

Mr. Batchelder: I will withdraw the question.

Respondent's Exhibit F

By Mr. Batchelder:

Q. Did the vessel get under way at that time? A. The vessel was under way at that time—got under way.

Q. Do you recall the heading of your vessel when the anchor was away, approximately? A. (The witness paused.)

Q. Well, was it north, south, east or west? A. Well, I could figure that out if I had just a little more time.

Q. Take all the time you want. Perhaps a photostat of the chart of the area, would that help? A. No.

Q. To give you an idea of how you were lying at the time? A. I do remember the bearing of the light vessel from our anchorage position.

Mr. Batchelder: I now offer witness Hellenic Beach Exhibit 2 for identification, offered in evidence June 14, 1949. (Handing to witness.)

By Mr. Batchelder:

Q. Does a review of that chart help to refresh your memory as to what your heading was at the time? A. Yes, it does.

Q. And what do you believe that heading was? A. You speak of the time?

Q. When the anchor was away and the order "Full speed ahead" was given. A. At the time we were heading approximately southeast.

Q. Approximately 120, you believe? A. Approxiately, yes.

Q. Who was on the bridge with you at the time that the order was given "Full speed ahead"? A The Master; the helmsman.

Q. Is that all? A. That is all.

Q. Who gave the order "Full speed ahead"? A. You mean the order for execution?

Respondent's Exhibit F

Q. Well, who first mentioned "Full speed ahead"? A. The Master.

Q. Which was carried out as an order. A. The Master.

Q. Had you suggested that full speed ahead was the proper order? Had you mentioned full speed ahead? A. No.

Q. You said nothing about what speed to take? A. I said nothing. That is not my job.

Q. How long had the Master been on the bridge prior to getting under way? A. That is prior to the time the anchor was away?

Q. Yes. A. Oh, I would say a half an hour.

Q. In other words, he came up on the bridge about 20 minutes after one? A. Something like that, yes.

Q. And he was up there from 20 minutes after one until the anchor was away? A. Yes.

Q. And what had he been doing during that period? A. Well, I would answer that by saying nothing more than his routine duties, in any such situation of heaving the anchor.

Q. When did he give the order to commence heaving the anchor? A. Oh, about the time he came on the bridge.

Q. He took half an hour to bring up the anchor? A. You must realize it takes time to call the mates, the boatswain, get the men ready, get the operation into effect.

Q. Do you recall seeing him plot a course on the chart for your further trip? I understand you were proceeding to Philadelphia.

Mr. Estabrook: I object to the form of the question.

Mr. Batchelder: I will withdraw the question.

By Mr. Batchelder:

Q. Had you called the Master to come up on the bridge? A. Acting on his orders, yes.

Respondent's Exhibit F

Q. What were his orders that compelled you to call him up on the bridge? A. To call him if the fog lifted.

Q. When did the fog lift? A. I think about the same time I called him.

Q. In other words, about 20 past 1:00? A. Approximately.

Q. What was the visibility at that time? A. Well, I believe, before, I stated I estimated it to be three or four miles.

Q. When you say "before." you are referring to the Coast Guard hearing? A. To the hearing.

Q. In connection with the collision. Is it your present recollection that the visibility was about three or four miles? A. It is.

Q. The ship was due to sail to Philadelphia, was it not, after you had weighed anchor? A. In other words, you mean our destination?

Q. Your destination, yes. A. Yes.

Q. And you had anchored off Overfalls simply because of the fog of the preceding evening? A. I was given to understand that, yes.

Q. Did you have any reason to think it was any other reason? A. No.

Q. Was it foggy the preceding evening? A. It was.

Q. Do you know whether any other vessels went up the river during the time you were anchored? A. I do not.

Q. You don't know? A. I do not know.

Q. But you believe that you anchored because of the fog?

Mr. Estabrook: I object to the form of that question.

Mr. Batchelder: By implication he says there might be some reason.

The Witness: That was not my reason for making that statement. I did not wish to imply that.

Respondent's Exhibit F

Mr. Estabrook: I believe that you can develop that the man was asleep at the time the Exmouth anchored.

The Witness: The way you worded the question caused me to answer with a little caution.

By Mr. Batchelder:

Q. I simply want to find out whether there was any other reason for anchoring the preceding evening than the fact of the fog. A. Then, if that is your reason, there was no other.

Q. When the Master came up to the bridge, at approximately 1:20, what did you say to him concerning the weather? A. Naturally, I can only give you approximate statements. I called him on the telephone and I told him that the fog had lifted, which I had been instructed to do.

Q. Do you have a night order book on your vessel? Did you have a night order book on the Exmouth? A. I believe so.

Q. Had you read the night order book? A. You were asking me if we had a night order book?

Q. On the Exmouth. A. Yes.

Q. Your answer was yes? A. No. The answer is not yes to the question. There are occasions that night orders are not written out. Sometimes the order is verbal. This was one of those occasions.

Q. It was not a practice on the SS. Exmouth to have, as a routine thing, a night order book? A. Usually, when the vessel was at sea, in other words, crossing the Atlantic, not sailing coastwise. In other words, if the Master had no reason to come to the bridge for anything at all, he would write up the night orders. If he thought that he would be up there such as he would be sailing up and down the coast, he would usually pass verbal orders to the mate on watch.

Respondent's Exhibit F

Q. And what were your orders when you relieved at twelve o'clock? A. To call the Master if the fog lifted.

Q. When you telephoned the Captain, he was in his cabin? A. I assume that.

Q. Is that where you reached him? A. By telephone.

Q. Well, the telephone you called him on, could it be answered anywhere else than in his cabin? A. Under circumstances, yes, it could be.

Q. Under what circumstances could it be answered anywhere else? A. If the phone was not functioning properly, which has happened.

Q. Where could it be answered in that event? A. Almost any other telephone station on the ship.

Q. What kind of a system do you have? Do you have a telephone with a button for the Captain's cabin and a button, say, for the Chief Engineer's cabin, or— A. Well, they are not buttons, they are pointers, more or less.

Q. On a dial? A. A dial.

Q. And you turned the dial to a point marked for the Captain's cabin? A. Yes.

Q. And does that ring a bell in the Captain's cabin? A. If it is functioning properly, yes.

Q. And you made this call yourself? A. I did.

Q. And you placed the pointer on the mark for the Captain's cabin? A. I did.

Q. And you know the Captain's voice? A. Yes.

Q. And you are reasonably sure that the person who answered was the Captain? A. I am.

Q. And he answered immediately? A. Yes. It took no more time than usual.

Q. What is his usual time for answering the telephone? A. I can't—I can't say that.

Q. And how long after you called him did he appear on the bridge? A. Do you want minutes or almost immediately? Is that satisfactory?

Respondent's Exhibit F

Q. Well, approximately, yes? Do you mean by "almost immediately" five or ten minutes? A. Oh, less than five minutes.

Q. Where is the Captain's cabin located in relation to the wheelhouse? A. Directly below. His office—they are interconnected—his office and his cabin.

Q. And you were under the impression at the time you called him that he was in his cabin, since you called his cabin; you presumed he was there? A. Yes.

Q. And you got him there? A. Yes.

Q. You have no reason to think he was anywhere else? A. No.

Q. When you called the Captain on the phone, did you tell him the visibility, the approximate visibility? A. No. I said the fog was lifting, which I considered sufficient.

Q. What did he say to you? A. Something to the effect that "I will be right up."

Q. Do you remember his exact words? A. No.

Q. But at the time you were satisfied that he would be up directly? A. Yes.

Q. And when he reached the wheelhouse, did he check any of the anchor bearings? A. No. That is usually my job. That was my reason for being on the bridge.

Q. Did he ask you whether you had? A. I may have told him myself. I usually do.

Q. There was no indication that you had shifted your berth? A. No.

Q. Do you know of your own knowledge whether he was on the bridge when the ship was anchored? When the ship anchored? Do you know? If you don't know, just say so. A. When the ship first anchored?

Q. Yes. A. I don't see how I can answer that, because I was not there.

Q. That is all I wanted to know. I just wondered if you knew. You don't have any duties at the time of anchoring? A. No.

Respondent's Exhibit F

Q. What was the first order the Master then gave after he had reached the wheelhouse, as far as the navigation of the vessel was concerned or the preparation for getting under way? A. In other words, you speak of general preparations for getting under way?

Q. That is right. A. His orders were nothing more than routine: "Call the mates. Get the boatswain. Start heaving. Put the engines on standby."

Q. And did you carry out all those orders? At least, did you notify the various people, or did you ask somebody else to do it? A. I don't remember that. I can't remember that.

Q. Do you recall whether you used the telephone to call any of the mates? A. That is not usually the practice. I don't remember for sure.

Q. What is the practice? A. I go down or perhaps send a man down to call the mate and boatswain.

Q. Did you call the engine room or is that done by the telegraph? A. No. That is usually a practice to notify them that we will be heaving the anchor soon.

Q. How do you do that? A. By telephone.

Q. The telephone operated properly on that occasion? A. Well, I did not say we did. I don't remember. But I say that is usually the case.

Q. Oh, I am sorry. Do you recall about how long it took for the boatswain and the Chief Officer to come up on the bow, begin heaving in the anchor? A. No, I don't remember.

Q. Does your log reflect when you began to heave in the anchor? A. I believe it is here. (Indicating.) We commenced heaving the anchor at the same time we had standby.

Q. And what time was that? A. Which was 1:42.

Q. And the order for full speed ahead was given at what time? A. At 1:51.

Respondent's Exhibit F

Q. In other words, the Captain was on the bridge from about 20 minutes past 1:00 to 1:51 before you began heaving the anchor? A. Will you say that again?

Mr. Batchelder: Would you read it?
(The last question was read by the reporter.)

A. No. That is not right.

By Mr. Batchelder:

Q. I believe you testified that the Master came up on the bridge approximately 20 past 1:00? A. That is right.

Q. And— A. The anchor—

Q. The log reflects that you began heaving the anchor at 1:51. Was he on the bridge during that entire period? A. I believe I said the anchor was away at 1:51.

Q. I am sorry. Then it was 1:42 that you began heaving the anchor. I am sorry. A. That is right.

Q. That was my error. Do you recall what the Master was doing during that period of approximately 20 minutes? A. If you speak of his exact actions, I cannot tell you.

Q. Did he plot a course to take you to, say, the pilot station? A. In other words, did he go into the chart room at that time and plot a course? I cannot answer that with certainty.

Q. Do you recall— A. It is my—

Q. —whether a course— A. It is my understanding that the course had been laid out previously but I am not sure.

Q. Well, as a deck officer, had you checked the chart with the thought in mind that you were going to get under way and proceed to the pilot station, just to have in your own mind what the course would be? A. Yes. I recall I checked my bearing of the lighthouse and so forth.

Respondent's Exhibit F

Q. Do you recall what that proposed course was to be? A. You are speaking of the course to the light vessel from our anchorage? Is that it?

Q. Well, perhaps I have gotten ahead of myself. Did you plan to lay a course from your anchorage directly to the pilot vessel? A. No. That can be done visually in most cases.

Q. Could you see the pilot vessel at that time? A. Yes.

Q. There had been fog? A. There had been fog.

Q. Had you been able to see the pilot vessel when you came on watch, for instance? A. No.

Q. So, of course, there was always the possibility that the fog would come back? A. The possibility was there, I suppose.

Q. In other words, it might have been prudent to have known your course, in case the fog came in, so that you wouldn't lose the pilot vessel?

Mr. Estabrook: I object to the form of the question.

By Mr. Batchelder:

Q. In other words, it appears that you were proposing to lay a course to the light vessel or to clear the light vessel, instead of a course to the pilot ship?

Mr. Estabrook: I object to the form of that question.

By Mr. Batchelder:

Q. Were you planning to lay a course from your anchorage, to clear the light vessel? A. You speak of me personally?

Q. All right. You, personally. A. I was not planning to.

Respondent's Exhibit F

Q. As a watch officer, that part hadn't entered your head as to what you were going to do? A. No.

Mr. Estabrook: I object to the form of the question.

By Mr. Batchelder:

Q. Had a course been laid on the chart to clear the light vessel? A. If it is not here (indicating) I can't remember now.

Q. You don't recall the Master laying out a course to clear the light vessel? A. I do not remember that.

Q. Did the Master go near the chart? A. I believe you stated yourself that this happened three years ago, and I can't remember his actions at that time.

Q. After the anchor was away and the order for full speed ahead was given, what course was given to the helmsman to steer? A. As I recall it, we swung around—

Q. What was the first order to the helmsman? A. Well, it would be hard left.

Mr. Estabrook: Speak up so we can all hear you, Mr. Giffin.

By Mr. Batchelder:

Q. Hard left? A. That is right.

Q. How far away from Overfalls were you at that point? A. I can't even remember that unless it is on here. (Witness perusing exhibit.) No, it is not here.

Mr. Estabrook: He is referring to Hellenic Beach Exhibit 2 for identification.

Respondent's Exhibit F

By Mr. Batchelder:

Q. Do you recall testifying before the United States Coast Guard hearing in New York in connection with the investigation of the collision, June 9, 1949? A. I do.

(At this point there was an off-the-record discussion, after which the following occurred:)

By Mr. Batchelder:

Q. Would it refresh your recollection if I advised you that you testified that the vessel was at anchor approximately one mile, bearing 291 degrees from Overfalls Light vessel? Does that sound approximately correct? A. Yes. If that was my testimony, that—

Q. You believe that was? A. I believe that.

Mr. Estabrook: I suggest that the record should be that the light ship bore 291 degrees from the Exmouth.

Mr. Batchelder: That is correct.

By Mr. Batchelder:

Q. After the Master had given the order "Hard left," which I believe you said he had—is that correct? A. I don't believe I said he had given it. I said the order had been given.

Q. Do you recall who gave it? A. At the moment, no, I don't.

Q. It was either you or the Master, wasn't it? A. It must have been one of the two of us.

Q. But you don't recall which? A. I do not remember which, no.

Q. And that order was carried out? A. I assume it was.

Q. The vessel turned? A. The vessel turned.

Respondent's Exhibit F

Q. And subsequently, was an order given to steady on a particular course? A. I think perhaps I should clarify that. This I do recall. I was told to put the ship on the course.

Q. On course? A. On the course.

Q. By whom? A. By the Master.

Q. And what course did he give you? A. I was told to put the ship on the course. I gave the order to the helmsman as she was swinging. I do not know whether I gave the original order or not. As I saw the light ship, the light vessel, on the starboard bow, which is where the Master wanted it, I told the helmsman to steady. I may have asked him then "What course are you heading?" or "What are you heading?" I also remember watching the light vessel and I thought we might be a little too close, so I told him to come five more degrees to the left. Now, that is the way the course was set.

Q. It was not plotted on the chart, or at least if it was plotted on the chart, you did not take your course from the chart but took it visually from an observation of Overfalls Light? A. I took it visually, yes.

Q. Where were you standing, do you recall, when you gave those orders to the helmsman? A. Probably in the wheelhouse.

Q. Were you observing a repeater at the time? A. I was not. That was visual again.

Q. There is one repeater in front of the helmsman? A. There is a steering repeater off to one side of him. In other words, it is for his use.

Q. Is that to the left of him? A. A little to the left.

Q. Is there a repeater on the wings of the bridge? A. There are two, one on each wing.

Q. Do you recall where the Captain was at the time you were swinging left? A. Not exactly. I know he was on the bridge.

Respondent's Exhibit F

Q. Did you see any other vessels at the time you were swinging? A. This was after we were under way and we were swinging? Yes, I did.

Q. And what did you see? A. I saw the pilot vessel, the light vessel, one other ship that had been anchored, and one more ship coming down the—from the pilot station.

Q. Where was the vessel that had been anchored, in relation to your vessel? A. All I can say, she was close to us.

Q. On which side? A. Well, it would be on our starboard side. This is while we're still at anchor.

Q. Did she get under way about the same time you did, within five or ten minutes? A. I do not recall that.

Q. Was she under way while you were swinging? A. I don't think so.

Q. When did she get under way in relation to the time you got under way? A. I have no idea.

Q. Was she under way during the time you were approaching the light vessel? A. Might I say that after we got under way I did not notice the other vessel at all. I don't recall any of her movements.

Q. How close was she when you were anchored? A. Well, it is difficult to estimate. I would say two or three hundred yards, roughly.

Q. Off your starboard side? A. We were lying parallel to her. She was on our starboard side.

Q. When you were at anchor? A. When we were at anchor.

Q. And then you swung around to the left? A. That's right.

Q. In other words, you swung away from her? A. Yes.

Q. Did you bring to the Captain's attention the position of any of the lights which you have just mentioned, the light vessel, the pilot vessel or the vessel coming down, or the anchored vessel? A. What do you mean by positions?

Respondent's Exhibit F

Q. Did you point them out to the Captain? A. Yes.

Q. All of them? A. I believe I did, all of them.

Q. You think he was aware of the position of each of them as you pointed them out?

Mr. Estabrook: I object to the form of the question.

Mr. Batchelder: There appears to be a great delay in the objections to the form of the questions, being made after the witness appears to have difficulty in answering the question.

By Mr. Batchelder:

Q. What lookouts were posted on the Exmouth at the time you got under way? A. Well, as is ordinarily the case, there is one man on the bow.

Q. He was the only lookout? A. Naturally, I acted as lookout; the Master as lookout.

Q. All competent lookouts? A. Well, after having done it for a number of years, I think that the man would be qualified.

Q. From your recollection after you had steadied on the course which was laid out to clear the light vessel, do you recall whether the ship had reached its full speed? A. Now, you said the course that was laid out?

Q. I mean your visually observed course. A. I would have no way of knowing whether she had reached full speed or not.

Q. Any way of knowing how fast she was going? A. Not with certainty, no.

Q. How fast do you think she was going? A. You were assuming that the vessel reached full speed, I suppose?

Q. No. I am not assuming anything. I am just trying to find out, well, really, how long it takes your vessel to reach full speed; and I presume this was a rather short

interval, that she had not reached full speed when you steadied on your course. A. Of course, you would agree that the engineers might be a little slow upon occasions or something that I know nothing about might have happened.

Q. I don't want a technical answer. I just want your opinion as a watch officer, as to whether you felt that your vessel had reached full speed by the time you had steadied on your course. You have observed her characteristics and I have not. A. In other words, you ask me if I think we reached full speed?

Q. That is correct—as a watch officer observing the vessel's motion through the water as well as the objects in sight. A. Once more, you refer to full maneuvering speed, or the same speed, or—

Q. I presume when you gave the order for full speed ahead, under those circumstances the engineers would give you maneuvering speed? A. Maneuvering speed? I don't think I can truthfully say. I don't know whether she reached full speed or not.

Q. Now, you mentioned that you sighted a vessel coming down, I believe you said from the pilot station? A. I take it for granted that she came from the pilot station.

Q. What lights did you see on that vessel? A. The white mast head and range lights and the port's red running light.

Q. Did you call the Captain's attention to the fact that you had seen those lights? A Yes.

Q. And you mentioned specifically any of those lights? A. I usually do. If it is showing red, I say "She is showing red."

Q. Do you have any reason to think that the Master did not hear you when you told him that? A. No, I have no reason to think that.

Q. Did any of the subsequent events make you think that maybe he had not heard it?

Respondent's Exhibit F

Mr. Estabrook: I object to the form of the question.

By Mr. Batchelder:

Q. Do you recall what the course was—

Mr. Oast: Do you want an answer to that last question?

Mr. Batchelder: I am not demanding an answer.

By Mr. Batchelder:

Q. Do you recall what the course was that the helmsman finally steadied the ship down on, after your swing to the left? If you don't recall the course, perhaps I can refresh your recollection from the hearings before the Coast Guard. A. Well, as—you say as we were—

Q. After you had completed your swing. A. Completed the turning and were heading past the light vessel, to the light vessel?

Q. Yes. Page 83. (Reading)

"Question: The first course after you got the anchor up? Answer: The first course would be 275 after swinging."

A. That would be approximate.

Q. And, in order to save time, I believe that you had earlier testified that the course was 280 and you corrected it five degrees, as you said today? A. That is correct.

Q. Making it 275. After you had steadied on course 275, did you again observe the lights of the vessel approaching, presumably from the pilot vessel? A. Yes.

Q. And what lights did you see then? A. The same lights.

Respondent's Exhibit F

Q. And approximately how far away was that vessel, would you say, after you had completed your swing? A. May I refer to the chart?

Mr. Johnston: Again referring to—

Mr. Batchelder: Hellenic Beach Exhibit 2 for identification.

A. (Continuing) After looking at this chart, I would say she was about five miles away, after completing the swing.

By Mr. Batchelder:

Q. After you had completed your swing? A. After we had completed our swing; this, once more, is an approximation.

Q. When you laid out your course of 275 by visually observing the light vessel, how close aboard did you plan to pass her? A. You always use the words "laid out the course."

Q. Well, I tried to qualify it by saying by visual observation of the light vessel. A. In other words, you want to know just how far I intended to pass off the light vessel? I had not a set distance in mind. I intended to clear the vessel with enough room and still have her close by as I passed.

Q. Had the Master given any specific instructions as to how close to pass her? A. Specifically, no.

Q. What had his instructions been, if you recall them accurately?

Mr. Estabrook: I object to the form of the question.

By Mr. Batchelder:

Q. What were the instructions that the Master gave?

Respondent's Exhibit F

Mr. Estabrook: He didn't give any instructions.

Mr. Batchelder: He said that he gave instructions to clear the light vessel, or approach the light vessel.

Mr. Estabrook: That is what I understood. That has been covered already. You are asking about something else.

Mr. Batchelder: I am asking him what were the specific words of that order.

Mr. Estabrook: No objection to that question.

. As far as recalling specific words, I cannot give you
em. I can give you—

u Mr. Batchelder:

Q. What did he say? "Head out toward the light essel"? A. Something to the effect of "Put the light essel on the starboard hand. Pass her close to."

Q. Pass her what? A. Close to. In other words, close n the starboard hand.

Q. Did he make any mention of avoiding the vessel hich was approaching you from the pilot vessel? A. I o not recall such an order.

Q. Did he make any mention of the vessel approaching? A. I cannot recall anything there.

Q. After you had set this course of 275, what was the earing of the vessel approaching which later turned out o be the Hellenic Beach, relative bearing from you? A. I can only answer that by referring to my testimony at he Coast Guard hearing, which states she was approxinately three points on the starboard bow.

Q. Did you continue to observe the vessel that turned ut to be the Hellenic Beach? A. I did.

Q. Did that bearing of three points off the starboard ow change in the next five minutes? A. I will have to nswer that by saying, not noticeably.

Respondent's Exhibit F

Q. In other words, it stayed pretty much steady? A. Quite constant, yes.

Q. And as a watch officer, did that give you any cause for alarm? A. I shall have to say yes to that.

Q. It caused you alarm because if the bearings remain constant it indicates that you are on a collision course, is that correct? A. Yes. The rules of the road state so.

Q. And when you are in that situation, you knew from the rules of the road that you were the burden vessel?

Mr. Estabrook: I object to the form of that question.

By Mr. Batchelder:

Q. Were you the burden vessel in that situation?

Mr. Estabrook: I object to the form of that question. You are asking this witness a question of law.

Mr. Batchelder: He is testifying as to his knowledge of the rules of the road as a watch officer. I will rephrase the question.

By Mr. Batchelder:

Q. As an officer of the deck at the time, did you believe that your vessel was the burden vessel in a crossing situation, under the rules of the road? A. I take it for granted I am not on trial myself.

Q. Certainly not. A. In that case, as you put it, a crossing situation, we would be termed the burden vessel.

Q. And your vessel was in a crossing situation? A. Well, once more—

Q. At the time you completed your swing.

Respondent's Exhibit F

Mr. Estabrook: At this time I would like to enter on the record my objection to this line of testimony on the ground that the determination of whether there was a crossing situation or special circumstances is one of the issues to be decided in the ultimate determination of the case, and the witness should not be in a civil litigation required to testify to what must ultimately be decided by the judge in admiralty.

Mr. Batchelder: I want his opinion as a watch officer.

Mr. Estabrook: I am putting it on the record. Now go ahead.

Mr. Batchelder: I am asking him this question as a watch officer to determine his opinion as to whether his vessel was in a crossing situation at the time he steadied on a course of 275 and saw the vessel approaching which later proved to be the Hellenic Beach.

A. You say at the time I steadied on the course of 275? In that case, I would consider it a crossing situation.

By Mr. Batchelder:

Q. Did you point that fact out to the Captain? A. You are asking me if I pointed the fact out that we were in a crossing situation to the Captain? That is not usually done.

Q. Perhaps you didn't do it in words exactly like that, but possibly you pointed out to him that you saw a vessel showing a red light, indicating that they were approaching on a course across yours and that you were on that vessel's port hand?

Mr. Estabrook: I object to the form of that question.

Respondent's Exhibit F

By Mr. Batchelder:

Q. I believe you have testified that you notified the Captain that there was a vessel approaching with a red light showing?

Mr. Estabrook: I object to the form of that question.

Mr. Batchelder: I believe he so testified. I will strike the question.

By Mr. Batchelder:

Q. Did you notify the Captain that there was a vessel approaching showing a red light? A. I stated that previously, yes.

Q. And did you tell him again, after you had steadied on a course of 275? A. I might have. I don't know for sure.

Q. After steadying on a course of 275, what was the next order given to the helmsman by either you or the Master? A. Once more I must ask—you say after we had steadied on the course of 275? That, of course, means a 5-degree change to the left. The order would be "Steady as she goes", actually.

Q. That is true. What would be the next order after that? What was the next order after that? A. After settling on the course, "Steady as she goes."

Q. No. I mean after "Steady as she goes." A. Well I would like to clear that. I take it for granted that you are speaking of the time we had the lightship abeam?

Q. I believe so, yes. Well, will you give in your own words what occurred as far as orders to the helmsman are concerned, after the order "Steady as you go," and as you were coming abeam of the light vessel? A. One

more, I can say that I cannot recall specific words. I know that the order to come left was given when the lightship was abeam.

Q. And it was given to some specific course. Do you recall approximately what that course was? A. I believe the testimony states somewhere around 310 or 317.

Q. In other words, this order contemplated a course change completely around the compass to reach the course of 310 or 317 from your heading at that time? A. Are you asking if I—

Q. That would have been the result of this order of "Come left to 310" or "317"? A. In other words, if we had come left and come to 317, we would have to go, come almost completely around a circle. Yes, that would be the case.

Q. And who gave that order to come left? A. The Master.

Q. And what did you say? A. Something to the effect that "You mean right, Captain?" or something to that order.

Q. Do you recall what the helmsman said? A. He may have said something to that effect.

Q. What did the Captain then say? A. Once more, something to the effect that "No, I mean left there."

Q. And then what did you say? A. Again, something to the effect that we should come to the right.

Q. Was this conversation in that quiet tone? A. Well, I can't remember that.

Q. Well, was it vehement? A. I might say it was emphatic.

Q. Was it accompanied by any profanity? A. I can't recall that.

Q. But it was emphatic? A. Yes.

Q. On your part and on the Captain's, too? A. I don't —I can't speak for the Captain. I speak for myself.

Respondent's Exhibit F

Q. Well, was his tone of voice emphatic? A. Well, it must have been. Yes, I would say it was.

Q. It was fairly loud and definite? A. I will say that I could hear him.

Q. How far away were you? A. Quite close.

Q. And how long did this exchange continue? A. Oh, I can't tell you that. It might have been a few seconds, it might have been a couple of minutes. I don't know for sure.

Q. What was the result of it? What did you do? A. As I recall it. I was told to go into the chart room and check the course and make sure.

Q. Check what course? A. The course, that would be, if it was laid down from the light vessel to the pilot vessel.

Q. In other words, the Captain was contemplating that 310 or 317 was a course from the light vessel to the pilot vessel?

Mr. Estabrook: I object to the form of that question.

By Mr. Batchelder:

Q. Do you know what the course from the light vessel to the pilot vessel was? A. Well, it would vary or it might vary by one or two degrees.

Q. What course did you plan to set? A. If I recall, I think I testified that it was around 317, something like that.

Q. When you went into the chart room, it wasn't determined whether you were going to come left to that course or come right to that course? A. It was not determined, no.

Q. And you were going into the chart house to determine what the proper course between the light vessel and the pilot vessel would be? A. Yes. I would say that.

Respondent's Exhibit F

Q. Did you have any other object in going in the chart house? A. No.

Q. Did you actually lay out a course on the chart between the light vessel and the pilot vessel? A. I did not.

Q. What did you do in the chart room? A. As I recall it, I laid the parallel rulers on the approximate course and read it off the compass rules. I did not lay any course out.

Q. But you did find out what the proper course would be? A. Yes.

Q. The Captain had asked you to go in the chart room to determine for him the proper course between the lightship and the pilot vessel, is that correct? A. I think this testimony will say that I think the reason for my going into the chart room was to find out whether we should go right or left to that course. I think the course had been predetermined, according to this testimony.

Q. Which testimony are you referring to? A. At the moment.

Q. In other words, your testimony now is to the effect that you went into the chart room to determine whether you should go right or left? A. That is what we were getting at here, was it not?

Q. Then I misunderstood you. I thought you said that you went into the chart house to determine whether the course from Overfalls to the light vessel was 310 or 317 or what the course should be. A. I may have said that. I don't recall it now.

Q. Well— A. I think—

Q. Then, what did you go into the chart house for? A. To get back to our words of a few moments ago, we were saying we should come right or we should come left, and I think my orders were to this is to the best of my recollection— to go into the chart room and find out whether or not we should be to the right or to the left.

Respondent's Exhibit F

Q. How were you going to determine that in the chart room? A. I think I should say I was obeying orders.

Q. And when you went into the chart room, you actually didn't do anything but think that was a silly order?

Mr. Estabrook: I object to the form of the question.

By Mr. Batchelder:

Q. Go ahead and answer that one. Go ahead and answer it. A. I thought it was pointless.

Q. When you came out of the chart room, what did you say to the Captain? A. Something to the effect that we had to go right.

Q. What did the Captain say? A. I believe he told the helmsman then to come right.

Q. By the time you came out of the chart room, how far away was the Hellenic Beach? A. Once again, I can only estimate. I would say a mile or a mile and a half. It has been a long time ago.

Q. But you have read the testimony before the Coast Guard more recently than three years ago, haven't you? A. I did not have the opportunity to read it all. I could not finish it.

Q. You have not read the Coast Guard testimony at all? A. Entire. Part of it, yes.

Q. Have you read your testimony? A. Yes.

Q. Recently? A. Sunday.

Q. Sunday? Four days ago—three days? A. (No answer.)

(Thereupon, at 12:30 o'clock P. M., a recess was taken until 1:30 P. M.)

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AFTERNOON SESSION.

(Met pursuant to adjournment, with Messrs. Batchelder, Oast and Estabrook present.)

(On request of Mr. Batchelder, the record was read by the reporter as follows:)

"Q. By the time you came out of the chart room, how far away was the Hellenic Beach? A. Once again, I can only estimate. I would say a mile or a mile and a half. It has been a long time ago."

By Mr. Batchelder:

Q. You came out of the chart room then and said to the Captain, "We should come right," is that correct? A. Yes.

Q. Did the Captain agree? A. About that time I would say yes, he agreed.

Q. Well, did he say "Yes, come right"? A. Something to that effect.

Q. Did he give any order to the helmsman? A. Well, I say something to that effect. I don't know. In all probability he gave an order to the helmsman. I can't tell you what it was: something to the effect of "Come right."

Q. Was a course given— A. I don't—

Q. —by you or the Captain? A. I don't think so.

Q. Did you have a course in mind?

Mr. Estabrook: I object to that question.

By Mr. Batchelder:

Q. Am I correct in saying that you had previously considered that the course of 311 or 317, you are not exactly sure which, was the proper course between the light vessel and the pilot vessel? A. Yes.

Respondent's Exhibit F

Q. Where was the light vessel in relation to your vessel, both in distance and in bearing, when you came out of the chart house? A. Well, I cannot give you the distance, but I can say she—by that time we were swinging left and she must have been somewhere astern of us.

Q. You were swinging left, your vessel? A. You remember the order had been given to come left.

Q. And the helmsman had obeyed that order? A. To my knowledge.

Q. Had you seen the vessel swing? A. Well, can't we say that I took it for granted that the vessel was swinging? At that time I could not take bearings, or see anything ashore—or notice anything at that time ashore.

Q. Was the vessel swinging, to your knowledge, prior to your going into the chart room? A. Well, I can't answer that.

Q. Did your vessel ever reach a course of 311 at that point? A. May I say I doubt it.

Q. Did she swing to the right? A. Once more, I cannot say. I don't know.

Q. I read you a series of questions and answers. See whether these refresh your recollection. (Reading:)

> "Question: What did he eventually do, the helmsman? Answer: After I went in to make sure that the course should be gone to the right, I hollered from the chart room that she should go right, to the Captain.
>
> "Question: What did he say? Answer: Then he says to the helmsman, 'Bring her right, then.'
>
> "Question: Did the helmsman do that? Answer: The ship was swinging.
>
> "Mr. Dow: The what?
>
> "Question: Did the helmsman do that? Did he bring her right? Answer: I didn't see him, but the vessel was swinging to the right.

Respondent's Exhibit F

"Question: Did you see the ship swing? Answer: Yes."

Do those questions and answers refresh your recollection as to what happened at the time? A. Once more, I cannot honestly say that I saw him coming to the right now.

Q. But you did so testify at the Coast Guard hearing? A. If it is there, I suppose I did.

Q. Did you observe the bow of your vessel in relation to the lights of the Hellenic Beach when you came out of the chart room? A. I can't—

Q. Either the bow or your mast or any object on your vessel? A. I understand what you want. I understand what you are asking. In other words, you want me to notice something ahead so that I would know whether she was swinging or not, but I can't say that I can recall that.

Q. When you came out of the chart room, where did you go? In the wheelhouse or the bridge, immediately? A. I went back to the wheelhouse.

Q. Did you take a position to the right of the helmsman? In other words, were you on the right-hand side, starboard side, of the wheelhouse? A. I believe I was, yes.

Q. Were you watching for the Hellenic Beach? A. Yes.

Q. Did you notice whether the Captain was watching the Hellenic Beach? A. Well, let us say I assumed he was. I did not notice.

Q. Did you mention the Hellenic Beach again to the Captain between the time you came out of the chart room and the collision? A. Yes, I did.

Q. What did you say to the Captain? A. Something about getting closer.

Q. Did you say "That ship is closer"? A. I can say those were the approximate words.

Respondent's Exhibit F

Q. Did you say that loudly and emphatically? A. I suppose I did.

Q. It was a pretty exciting moment, wasn't it? A. For me, yes.

Q. It was a rather alarming moment, in fact? A. Once more I can say yes.

Q. You were bearing down on this approaching ship pretty rapidly, weren't you? A. Well, let me say that to me it seemed that she was bearing down on us, if that—

Q. You were approaching each other rapidly? A. We were approaching each other rapidly.

Q. And you were the burden vessel? A. At that time?

Mr. Estabrook: Objection.

By Mr. Batchelder:

Q. You were on the other vessel's port hand? A. I wouldn't be able to say that for sure.

Q. Did you see her red running light? A. I must have.

Q. And you were still at full speed ahead? A. On the telegraph, yes.

Q. Any reason to think that the engines were not going full speed ahead? A. No.

Q. And you have reason to believe that the bow was swinging to the right? A. Let me say that I assumed that she was swinging.

Q. That would be into the path of the approaching vessel, would it not? A. Well, if she had been, I suppose that would be into the path of the approaching vessel, yes, sir.

Q. You considered it a dangerous situation? A. Yes.

Q. What did the Captain say to you in regard to the approach of the Hellenic Beach? Did he make any mention of it? A. As far as I can remember, when I called his attention to the other ship his answer was, "All right."

Respondent's Exhibit F

Q. You mentioned this after you had come out of the chart room and before the collision? A. No. After I came out of the chart room I don't remember.

Q. You said that to him prior to your going into the chart room, that the Hellenic Beach was on your starboard hand? A. I believe that is in this testimony.

Q. And he said all right? A. Yes.

Q. But you don't recall calling his attention to the Hellenic Beach after you came out of the chart room? A. Yes, I did. I called his attention but I cannot recall an answer at the moment. I don't know. He may have and he may not have.

Q. He didn't say to the helmsman "Hard right" or repeat "Hard right" or give any indication that he was excited about getting further over to the right? A. I might have. I don't—

Q. Did he give any indication that he knew what was going on?

Mr. Estabrook: I object to the form of that question.

Mr. Batchelder: Go ahead and answer that.

The Witness: Will you repeat that?

(The last question was read by the reporter.)

A. That is a hard question for me to answer.

By Mr. Batchelder:

Q. I will rephrase the question. Did he give any orders to the helmsman or to the engine after you came out of the chart room, before the collision? A. As to orders to the engine, I can definitely say he did not give orders to the engine.

Q. He didn't change the engine's speed at all? A. No. To the helmsman, I just—I can't remember.

Q. He may have given some order? A. He may have.

Q. Which you couldn't understand? A. That I possibly didn't hear.

Q. There was a great deal of confusion going on, wasn't there? A. As you mentioned before, it was becoming exciting for me and I—

Q. Pretty alarming? A. Yes.

Q. You were going along at full speed? A. Yes.

Q. And you were turning into the path of an approaching vessel? A. I don't believe I said that.

Q. Well, when you made your swing to the right, wouldn't that swing to the right carry you into the path of the approaching vessel?

Mr. Estabrook: I object to that question on the ground that there has been no testimony as to "the right swing."

(At this point there was an off-the-record discussion, after which the following occurred:)

By Mr. Batchelder:

Q. Would the swing to the right which we have been—

Mr. Estabrook: "a swing."

Mr. Batchelder: I am going to qualify it.

Mr. Estabrook: I am going to object to the use of the word "the" in describing a swing to the right.

Mr. Batchelder: Well, let me finish the question. Then if you want to object, go ahead.

By Mr. Batchelder:

Q. Would the swing to the right which we have been talking about and which was presumably made after Mr. Giffin came out of the chart room have turned the vessel into the path of the approaching Hellenic Beach?

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Mr. Estabrook: I object strenuously to the form of that question as not being a fair condensation or summary of prior testimony.

By Mr. Batchelder:

Q. Did you testify that you assumed the vessel was swinging to the right after you came out of the chart room? A. I did say I assumed that she was.

Q. You also testified that the Hellenic Beach was approaching on your starboard hand? A. I believe I did.

Q. Assuming your vessel was swinging to the right, then would the path of your vessel be in the path of the Hellenic Beach? A. If we assume the vessel was swinging to the right?

Q. Which you did assume.

Mr. Estabrook: I object to that statement. I think the question should be answered as originally put.

By Mr. Batchelder:

Q. I read you this question and this answer from the Coast Guard hearings in New York, page 106. (Reading:)

"Question: Up until you were 75 feet apart, do you mean to say that your vessel had been swinging to the right toward the other ship on your starboard bow? Answer: That's right."

Do you recall that question and that answer? A. I cannot recall it.

Q. Do you believe that answer to that question to be incorrect? A. You must realize I have had time to think over the situation. The things I might have felt then

would not necessarily be the way I feel now after having had time to review it in my own mind.

Q. How do you feel now? A. Now I am not sure.

Q. You don't know, then, whether you were turning right, toward the other ship on your starboard bow, until the time the vessels were 75 feet apart as you testified in the Coast Guard hearing? A. I cannot truthfully say that now.

Q. You don't know? A. I don't know.

Q. Did the Captain give any other order to the helm before the collision than the order which we have referred to about coming right? A. Yes. I do believe when he was aware that the collision was inevitable, he once more told the helmsman to bring her hard left again.

Q. How far were the vessels apart at that time? A. I would say that they were quite close.

Q. Had you made any suggestions to the Captain as to how to avoid the collision? A. As to how to avoid the collision? No, I did not.

Q. Did you say anything? A. I think it has already been stated that I told him we were getting closer; also, that I saw the red light on the starboard bow before that.

Q. You told him that? A. Yes.

Q. Pretty emphatically? A. Once more, it must have been emphatically.

Q. You were afraid there was going to be a collision? A. What time are we speaking of?

Q. I am speaking of all times after you came out of the chart room, before the collision. A. I will have to anwer yes to that. I think I should amend that.

Q. Go ahead. A. I should say I was afraid there would be a collision if immediate action was not taken.

Q. What immediate action did you think should be taken? A. I didn't—you are speaking of at that time? Well, I would say that one of the two of us should have gotten out of the way, or both.

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Q. What did you think your vessel should have done? A. Of course, that would all depend upon the time, how close we were to each other.

(At this point there was an off-the-record discussion between Mr. Batchelder and Mr. Estabrook, after which the following occurred:)

Mr. Batchelder: Would you repeat the last question.

(The last question and answer were read by the reporter.)

By Mr. Batchelder:

Q. Do you recall where the Captain was standing between the time you came out of the chart room and the time of the collision? A. To the best of my knowledge he was in the forward part of the wheelhouse, somewhere close to the midships porthole.

Q. Nearer to the port side or the starboard side? A. Well, if it was near any side, it would be—actually, it would be closer to the center than any of it.

Q. Did you notice whether he was looking at the Hellenic Beach at any time during that period? A. It was dark that night

Q. At any time between the time you came out of the chart room, to the time of the collision, did he mention the approach of the Hellenic Beach? A. I do not recall any mention of it.

Q. He appeared to pay no attention to them at all? A. I didn't say that.

Q. Will you say that? A. I don't think I could.

Q. But he didn't mention it? A. I cannot recall any mention of it.

Respondent's Exhibit F

Q. Immediately prior to the collision was there an order given for hard left? A. I say I think there was.

Q. Did the Captain give that order? A. Yes; if it was given. I believe it was.

Q. In your opinion as a watch officer, what was the cause of the collision? A. (The witness paused.)

> Mr. Batchelder: Mr. Giffin, I would like to say for the record that I realize it is very difficult to testify against your former Master; simply for reasons of perfect honor, that it is hard to testify against a former shipmate. On the other hand, there has been considerable property damage and a number of very serious injuries and I think it is only right that the cause of them should be found.

By Mr. Batchelder:

Q. I ask you again, what in your opinion as a watch officer do you consider to have been the cause of the collision? A. The only answer I can give is the fact that we failed, both ships failed, to get out of each other's way.

Q. From the testimony which you gave at the Coast Guard hearing, I read you this question and this answer, page 110. (Reading:)

> "Question: In your estimation as the officer of the watch, what was the cause of this collision? Answer: Our vessel failing to get out of the way of the other, or to stop or reverse."

Did you so testify? A. If that is an official record of the testimony, I would imagine that is the way I testified.

Q. Do you feel that you want to change that testimony at this time? A. Once more, in view of the fact that I have had quite a bit of time for reflection, study, I would prefer to let this last answer remain as my answer.

Respondent's Exhibit F

Q. How long have you had a Second Mate's ticket? A. Almost two years.

Q. And you haven't been signed on as a Second Mate by American Export Lines in that interval? A. No.

Q. Have you applied? A. Well, in our case, we make no application. If the position is presented to us, we accept it, naturally.

Q. But you have been constantly employed by American Export every since this collison? A. Well, I have worked for no other company. I should have amended my previous answer to that question to say that I had put a few months ashore, and during that time I studied, I went to school, and I also got my license. And I had been ashore a few months but I worked for no other company.

Q. And you feel now that the answer which you gave on June 9, 1949, at the Coast Guard hearing in New York, was in error in connection with the cause of the collision — the answer which I read to you? A. I would not say that was in error. It is just that I wish to—

Q. You have thought of certain modifications to it? A. If you want to put it that way, yes.

Q. Well, I want to put it the way it happened. Is it a modification? A. In what manner do you mean modification?

Q. Is it a change from your former testimony? A. I will have to call it that.

Q. Arrived at by independent thinking on your part? A. I have done quite a bit of thinking about it.

Q. And it is now your opinion that the answer which you have given in this testimony is correct and the answer which you gave at the Coast Guard hearing was incorrect? A. I do not feel the answer I gave the Coast Guard was incorrect. I think you used the word "modification." I will accept that. This is a modification.

Q. And you now think that the Hellenic Beach should have done something to get out of the way of your ship,

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which first turned left, next turned right, and then turned left, going at full speed?

Mr. Estabrook: I object to that last summary.

Mr. Batchelder: He has so testified.

Mr. Estabrook: I object, as not being a proper summary of the testimony. The question should be rephrased "Do you think the Hellenic Beach should have gotten out of the way of your ship?"

Mr. Batchelder: In order to form an opinion as to whether the Hellenic Beach should or could have gotten out of the way of your ship, you have to review the facts, that the Exmouth first went left, then went right, then went left, all at full speed.

Mr. Estabrook: I submit that that is not a proper summary of the testimony and, therefore, I object to the question.

The Witness: You still want it answered?

Mr. Batchelder: Yes.

A. I can only refer to the rules of the road once more, which state that the laws of good seamanship require any vessel when in doubt to get out of the way of the other vessel, in so many words.

By Mr. Batchelder:

Q. Were you fully acquainted with the rules of the road when you testified at the Coast Guard hearing? A. I believe so.

Q. There is no possibility that this modification has been suggested by your employers or your attorneys? A. Of course, the possibility is there but I would not say that happened.

Q. You wouldn't say it didn't happen? A. I beg your pardon?

Respondent's Exhibit F

Q. You wouldn't say it didn't happen? A. Well, leave it at that.

Q. Immediately after the collision, what did you first do? A. I believe my testimony states that I put the engine room telegraph on "Stop" and—

Q. You don't want to modify that, do you? A. No. I am quite definite on that.

Q. And then what did you do? A. And I stepped outside the wheelhouse to help the Captain to his feet. He had been knocked over by the force of the collision.

Q. And what did he say to you, and what did you say to him? A. Again, I think the words were, he said, "I didn't see them." It is in the testimony.

Q. Did he say that once or more than once? A. Probably more than once.

Q. At that time did you smell his breath? A. At that time, no. I do not recall smelling his breath at that time.

Q. And had you smelled his breath prior to that time? A. Yes.

Q. While you were on watch this particular night? A. Yes.

Q. Have you smelled the breath of people who have drunk intoxicating liquor? A. I have.

Q. Are you acquainted with that smell? A. I am.

Q. Would you say, in your opinion, that the Captain had been drinking? A. I believe my words were at that time "He gave the appearance of having been drinking."

Q. Would you describe the actions or other evidence that led you to that belief? A. Well, unsteadiness on the feet, perhaps a little incoherence in the talk.

Q. Anything else? A. Are you speaking of generalities?

Q. No. Any specific evidence that led you to the belief that he had been drinking. A. You are speaking now of the Captain?

Q. Of the Captain. A. I believe I said I smelled liquor on his breath, at that time. This is before the collision.

Respondent's Exhibit F

Q. While you were on watch? A. While I was on watch.

Q. When he had come up on the bridge? A. Yes.

Q. During a period immediately prior to the collision, after you had come out of the chart room, I believe you testified that it was a pretty exciting moment and that you were alarmed? A. Yes.

Q. Did it occur to you to sound the general alarm signal at any time in that period? A. To sound the general alarm system? No.

Q. After reflection of three years, has it occurred to you that that might have been the thing to do? A. In the first place, you realize that I am a better watch officer on the ship—you called me that. And the Master is in complete command when he is on the bridge. It has been my own personal policy not to do anything unless I receive the command to do so.

Q. In your experience, have you ever made a suggestion to your commanding officer while he had command on the bridge, that certain actions be taken which you felt were advisable? A. I have made suggestions, yes.

Q. Did it occur to you to suggest that the general alarm system be rung? A. At that time, it did not occur to me.

Q. Upon reflection, do you think that the general alarm system should have been rung? A. I think—I don't think the bell should have been rung, on reflection, at that time.

Q. Would you mind giving us your opinion as to why it should not have been rung? A. We settled the fact that things were exciting, and yet nothing had happened. Supposing I had rung the bell and everyone would have been excited and somehow or other we might have gotten out of it, and things would be pretty foolish about that time. That is after reflection, too.

Q. If you had rung the general alarm and, as it happened, a collision did occur, men might not have been injured that were injured, is that not true? A. On the other hand, there might have been more men injured.

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Q. Why do you say that? A. More people moving at that time, as soon as the alarm rings; get out of bed, all excited, and so forth.

Q. What if the vessel had been holed so severely that she would have sunk? It would have been a lot better to have rung the general alarm, wouldn't it? A. This, of course, is my personal opinion you are asking for? I still say if you had rung a general alarm you would have had more excitement, more men running around. Now, of course, I can't understand what this has to do with it but I will answer your question. Perhaps I do understand. If this collision would have holed her sufficiently, as you say, that would have aroused everybody, anyway. It would have been enough.

Q. A little late, perhaps, though? You think there was less danger of people becoming excited if they were awakened by the collision than if they had been awakened by the general alarm bell? A. And still you think the collision would have happened? Is that your—

Q. Well, the collision did happen. A. Well, of course, but I mean we are speaking now of hypothetical questions.

Q. Well, didn't you think—as you say, it was an exciting situation, and I believe you also said that the vessels were approaching each other rapidly, and the Captain had made no move to avoid the collision—that the collision was inevitable? A. After a period of time, yes.

Q. How long before the collision did you think it was inevitable? A. The realization hit me just before it happened.

Q. Didn't you realize that the Captain was incapable of commanding his vessel so as to avoid a collision? A. I don't think I realized that.

Q. It was a strong possibility of that, though, wasn't there?

Mr. Estabrook: I object to the form of that question.

Respondent's Exhibit F

By Mr. Batchelder:

Q. During that period from the time you came out of the chart room to the time of the collision, the Master gave one order to the helsman, as I recall. Is that correct? A. To get back to the testimony, I say there were two orders.

Q. After you came out of the chart room? A. Well, after or during the time I was coming out.

Q. As you came out of the chart room he said "Come right" but between the time he gave that order and the time of the collision, he gave only one order to come left, is that correct? A. To the best of my knowledge.

Q. Well, you were there? You were hoping something was going to happen that would avoid the collision? You must have been hoping that the Captain would say something? A. I say to the best of my knowledge, yes.

Q. You were hoping the Captain would do something, weren't you? A. Well, naturally.

Q. And he didn't? A. Up till what time do you refer?

Q. Until it was too late. A. Let's say that I didn't notice him do anything or say anything.

Q. And you were looking for him to do something, weren't you? A. I suppose I was.

Q. You were certainly hoping against hope that he would do something?

Mr. Estabrook: I object to the form of that question.

By Mr. Batchelder:

Q. I will give you a sheet of paper and two models and I will ask you to place the models in the position which you believe the vessels were in at the time of collision. A. Is that the instant of collision?

Respondent's Exhibit F

Q. At the instant of collision. A. (Witness placing models on sheet of paper.) Somewhere along here.

Q. Now, would you trace around each of the models, marking them "E" for Exmouth and "HB" for Hellenic Beach. A. (Witness complying) I think that is about the way it is.

Mr. Batchelder: I offer that for identification.

(The drawing referred to was marked Libelant's Exhibit 3.)

By Mr. Batchelder:

Q. Would you say that the angle between the starboard sides of the two vessels was approximately 65, 70 degrees? A. Let me look at that again.

Q. The angle between the starboard sides of the two vessels.

(At this point there was an off-the-record discussion, after which the following occurred:)

By Mr. Batchelder:

Q. Would you say that the angle between the starboard sides of the two vessels was approximately 60 degrees? A. Yes.

Q. Now, I offer you another sheet of paper and models, and I would like to have you place the models in the relative positions of the vessels when you came out of the chart room. If you can give me the approximate distance apart, you might write that on the sheet, too. I am primarily interested in the bearing, relative bearing. A. (Witness tracing, after placing models on sheet.)

Q. Would you mark those "E" for Exmouth, "HB" for Hellenic Beach. A. Once more, I must say, this again is approximate.

Respondent's Exhibit F

Q. I realize that. A. (Witness marking) This is when I came out of the chart room?

Q. Yes. When you first sighted the Hellenic Beach after you came out of the chart room. A. Again I will label this approximate.

Q. Just write "approximate" down. A. (The witness complied.)

Q. What do you estimate the bearing, relative bearing, of the Hellenic Beach from your vessel, at approximately one mile away? A. I can't—

Q. Either from that drawing or from your recollection. A. I can only give you a bearing from our bow, sir.

Q. That is what I mean, relative bearing. A. And this was as I came out of the chart room?

Q. When you first looked up and saw the Hellenic Beach, after you came out of the chart room. A. You want that on here or verbally?

Q. Verbally. A. I will say from three to four points.

Mr. Batchelder: I will offer that for identification.

(The drawing referred to was marked Libelant's Exhibit 4.)

By Mr. Batchelder:

Q. If you had continued to swing right as you have assumed you were doing when you came out of the chart room, is it now your opinion that the collision would have been avoided? A. You did say that I assumed that we were swinging right? I do not wish to state actually and emphatically that we were swinging right.

Q. No, I realize that. We discussed that. A. Once more, you want my opinion, personal opinion? (The witness paused.) I find it difficult to answer.

Respondent's Exhibit F

Q. As the burden vessel, it was your duty to keep clear of the Hellenic Beach, was it not? A. While we were the burden vessel, yes.

Mr. Estabrook: I object. I would just like to state for the record my opposition to this line of testimony, asking the witness to determine one of the issues of the case.

By Mr. Batchelder:

Q. On Libelant's Exhibit 4 for identification, you approximated the distance of the Hellenic Beach away when you came out of the chart room as one mile on your starboard bow three to four points. If you were coming right and continued to come right, you would pass under the stern of the Hellenic Beach, would you not, under those circumstances? A. If we were coming right?

Q. Not assuming that you would go around the compass as you almost did before. A. If we were coming right and we cleared the other ship, that is what you have in mind?

Q. That is what would have occurred? You would have gone under the Hellenic Beach stern? A. Well, we probably would have passed port to port, don't you think?

Q. Which would have been the proper maneuver under the circumstances, would it not? A. Yes.

Q. In fact, that is what you thought was going to happen, wasn't it? A. Yes.

Q. Or did you know what was going to happen, with that Captain?

Mr. Estabrook: I object to the question.

By Mr. Batchelder:

Q. That is what you thought was going to happen? A. That we would pass port to port if we were to swing right.

Respondent's Exhibit F

Q Under those circumstances, you wouldn't have needed to slow down? A. No.

Q. Would have passed safely? A. Yes, if we had passed port to port.

Q. There was nothing that you could see that made that maneuver dangerous in any way, was there? A. Which maneuver?

Q. Of coming right and passing under the Hellenic Beach's stern? A. No. Assuming that we were making a swing.

Q. If you had changed that swing, there wouldn't have been anything dangerous about it? A. I don't think so. You must, of course, consider the fact that—the degree of rudder the vessel has, and the amount of time it takes to get started. The underswing will make some difference along there.

Q. But in your opinion one mile away you could have swung under the stern of the Hellenic Beach? A. Well, we could have passed port to port.

Q. That is what I mean, yes. Did you consider blowing a whistle signal to the Hellenic Beach to indicate a port to port passing?

Mr. Estabrook: I object to the form of the question.

By Mr. Batchelder:

Q. Did you blow a whistle signal to indicate a port to port passing?

Mr. Estabrook: I object to the form of the question.

By Mr. Batchelder:

Q. Did you blow any whistle signal? A. I blew none.

Respondent's Exhibit F

Q. Did the Captain blow any? A. Yes.

Q. What signals did he blow and when? A. As I recall it, I remember saying I heard two.

Q. Immediately prior to the collision, within seconds of the collision? A. Well, let's say immediately prior to the collision.

Q. But not a minute before the collision? A. I couldn't say that with certainty.

Q. Well, was it less than a minute or more than a minute? A. I would have to say less than a minute.

Q. Did you suggest that he blow those two blast signals? A. No, I did not.

Q. Do you think that a two-blast signal at that stage was the proper signal? A. In my own mind, I am not sure whether that was intended to be a two-blast signal. There might have been more.

Q. Well, viewing the situation as you were doing at that point, did whatever signal you hear make sense? Did it seem a proper signal in the situation as you saw it? A. It could have been intended as a danger signal.

Q. It was a danger situation, anyway? A. That is agreed, and if—

Q. Possibly a little late? A. If the intention was the danger signal, then of course there was nothing wrong with it.

Q. When he blew that signal, did he give any orders to either the helm or the telegraph? When I say orders to the telegraph, I mean to you; you were presumably near the telegraph. A. None to the telegraph. I believe we have established the fact that he had given the left wheel I think that was still in effect at that time.

Q. "Left wheel" was still in effect, or it went into effect when he blew the whistles? A. Once more, I can't say with certainty because I don't remember.

Q. Do you recall hearing him give an order of "Left wheel"? A. I don't recall hearing it.

Respondent's Exhibit F

Q. But you are under the impression that an order was given? A. I would say that, yes.

Q. And you didn't give it? A. I did not.

Q. Did you give any orders after you came out of the chart room, before the collision? A. I cannot recall any.

Q. Did you make any suggestion to the Captain during that period? A. I believe I said that I called his attention once more to the ship.

Q. But you made no suggestions as to maneuvers which might be adopted by your vessel? A. I did not.

Q. Did you think the Captain had the situation well in hand? Is that the reason you didn't give any suggestions?

Mr. Estabrook: I object to the form of that question.

Mr. Batchelder: Go ahead.

A. Let me say at that time there was no such thing as having any situation in hand.

By Mr. Batchelder:

Q. You mean the Captain didn't have any situation in hand? A. At that time, no one did. The Captain on the other ship didn't.

Q. You don't know that the Captain on the other ship didn't? A. Perhaps I am assuming as you have been doing.

Q. But you don't think that your Captain had the situation in hand?

Mr. Estabrook: I object to the form of that question.

Mr. Batchelder: Go ahead.

A. I still have to answer I don't think anybody had any situation in hand.

Respondent's Exhibit F

By Mr. Batchelder:

Q. Well, certainly the situation on the Exmouth was not in hand when the Captain didn't make any maneuver to avoid a collision and apparently was giving incoherent orders and conflicting orders— A. Do you expect an answer to that?

Mr. Batchelder: Put "No answer", please.

Mr. Estabrook: I object to that comment and point out that there was no question; a statement by Mr. Batchelder as to what he believed the situation to be.

Mr. Batchelder: Let's read it again, and see what it was. I presume that there is a question mark at the end of that.

Mr. Estabrook: If you would like the witness to say whether that was correct or incorrect, then he may have to answer that—

The Witness: I did take that as a statement.

By Mr. Batchelder:

Q. My question was: Was that a fair representation of the situation at that time? A. Perhaps no. I have had an opportunity to speak to the Captain after that and he has told me he intended to swing to the left, and so forth.

Q. Is that your answer? A. Yes. I think that is my answer.

Q. Isn't it your honest opinion that the Captain was incapable of commanding his vessel at that time. A. Once again I will have to answer that by saying I am merely a junior officer. I am not capable of questioning any man's ability that has a rank over me. I am subject to his orders.

Respondent's Exhibit F

Q. You were subject to his orders but you are not now. In your honest opinion, wasn't the Captain drunk at the time of the collision?

Mr. Estabrook: I object to the question, on the ground that it is not shown that the witness is medically qualified to determine whether a man is intoxicated.

Mr. Batchelder: I am asking for his opinion.

By Mr. Batchelder:

Q. In your opinion, was the Captain drunk? A. That question, that very same question, was put to me in the same manner, before. Let me say that I had reasons for believing so at that time. But he was knocked over, banged his head. I found this out later on.

Q. He didn't bang his head until after the collision? A. Now, are you asking me before the collision or afterward?

Q. I am asking you before the collision. A. You used the word "drunk." Will you define that for me, please, accurately?

Q. Well, perhaps I should rephrase the question, then. Do you think he was under the influence of liquor to such an extent that he could not command his vessel? A. No. I don't honestly feel that. I don't feel that way. I don't think that way.

Q. You think that he was capable of command of his vessel? A. Yes.

Q. Although you do not believe that he gave the correct order to avoid the collision? A. Now, you said to avoid the collision?

Q. Well, to avoid the other ship. A. I would divide that into two parts, myself. In the one case where we are coming up to the light ship and so forth; and the

other part, where the two vessels were so close together that—

Q. All right. Give me your opinion as to the first situation. A. I believe I have stated that between that time I thought that the orders were not rational.

Q. At the time you were approaching Overfalls is the time you were referring to? A. I believe the words to use would be: "at that time." I rephrase that.

Q. But you think the orders after that time were rational? A. Once more, what do you mean "after that time"?

Q. Well, you have set up two classifications, the time that you were approaching Overfalls and the time after Overfalls.

> Mr. Estabrook: I believe we would save time if you would call the witness' attention to the specific orders that were given.
>
> The Witness: That is what I had in mind, because I remember saying that I didn't specifically hear any. I had assumed we were going left. This was—

By Mr. Batchelder:

Q. You assumed you were going left when? A. The order for hard left was given by the Master.

Q. Just prior to the collision? A. Yes. So if that is the case, why, I—

Q. Was that a rational order? A. At that time, it might have been.

Q. Although, prior to that time, if you had gone right you would have had a port to port passing, isn't that correct? A. That is correct.

Q. And at some time, a hard left order became the proper one, is that correct? A. I would say yes.

Respondent's Exhibit F

Q. Why was that? Because it was too late to come right? A. Yes.

Q. Although you had been presumably going right before that? A. As I say, I had assumed that we were going right.

Q. Upon reflection, do you think now that you hadn't been going right? A. Upon reflection, I can't say one way or the other.

Q. You really don't know what the helm was doing at that time, now? A. I do not.

Q. Do you think the Captain knew? A. How can I answer a question like that?

Mr. Estabrook: That is a perfect answer.

By Mr. Batchelder:

Q. You did hear an order of hard right after you came out of the charthouse? A. Yes, I believe I did.

Q. And that was how many minutes before the collision, would you guess? A. (The witness shook his head.)

Q. Well, can you approximate it? Would it be two minutes before the collision? A. May I say five minutes?

Q. You think it was five minutes before the collision? A. Again, this is an approximation. I—I just—(sentence not completed.)

Q. If this order was given approximately five minutes before the collision to come hard right, the ship would definitely swing right in five minutes, wouldn't it, if the order was carried out? A. In five minutes, yes.

Q. And you didn't notice any swing of your vessel's bow during those five minutes? A. I must say that I just I did not notice.

Q. But you were looking at the Hellenic Beach, were you not? A. I was watching her, yes.

Respondent's Exhibit F

Q. And you were probably trying to determine whether you were still on a collision course, were you not? A. Probably.

Q. Do you recall whether the bearings of the Hellenic Beach were constant during that period? A. To the best of my recollection, the bearing changed very little, if at all. I just can't remember any change in the bearing.

Q. Do you recall whether you brought that fact to the Captain's attention? A. No, I don't recall that.

Q. It was pretty important, though, wasn't it, because that indicates that you are on a collision course, doesn't it? A. Yes, it was. I think I should remind you that I probably had said that she is getting closer. I don't know how many times I said it.

Q. You said it more than once? A. I say, I don't remember how many times.

Q. Did you testify before the Coast Guard on August 16, 1949, in connection with—

Mr. Estabrook: I object to anything further of the question, as an attempt to put on the record indirectly what should not go on directly.

Mr. Batchelder: I am going to finish the question.

By Mr. Batchelder:

Q. (Continuing) —which was a proceeding solely concerned with the right of the Master of the SS. Exmouth to retain his license?

Mr. Estabrook: I object to that question as being improper. It is an attempt to smear the issues of the case.

Mr. Batchelder: Would you answer?

A. I was at a Coast Guard hearing.

Respondent's Exhibit F

By Mr. Batchelder:

Q. Did you testify? A. I testified.

Mr. Batchelder: I think that is all.

Cross-examination by Mr. Estabrook:

Q. Mr. Giffin, what happened after the collision? A. In what respect?

Q. What did you do? A. Well, as I say, I put the engine room telegraph on "Stop", stepped out and I helped the Captain to his feet. He had been knocked off his feet by the force of the collision.

Q. Then what did you do? A. I believe I suggested then that we sound the general alarm.

Q. And was that done? A. Yes.

Q. Then what did you do? A. I think my next step was to inquire from the Captain as to whether I should assist in getting the boats ready in case they were needed.

Q. And did the Captain answer you? A. Yes.

Q. What did he say? A. He told me to go ahead.

Q. And then what did you do? A. I went down on the boat deck—

Q. Which is located where, in relation to the wheelhouse? A. Well, that would be two decks below.

Q. Is it out in the open? A. In the open, yes.

Q. What did you do there? A. Oh, I would say assisted in general, helping to get the covers off.

Q. Then what did you do? A. While I was in the boat helping to take the covers off, somebody commenced lowering the boat and we found ourselves in the boats, in the water.

Q. Then what did you do? A. I believe about that time the Chief Mate came around and told all hands to get out of the boats up on deck, so I came up on deck. Then I went back to the bridge, as far as I can recall.

Respondent's Exhibit F

Q. And how long did you stay on the bridge? A. From then on until the end of my watch at four o'clock in the morning.

Q. What lights was the Exmouth showing before the collision? A. You speak of while we were under way?

Q. Yes. A. Well, the white masthead range light, the red and green side lights and the stern light.

Q. And at the time of the collision, did the Exmouth lights go out? A. Yes, all the lights went out.

Q. And how long did they stay out? A. I have no idea. I can't remember how long it was.

Q. Was anybody injured in the collision? A. I did not see the injured men.

Q. Were reports made to you as watch officer that people were injured? A. That two persons were injured.

Q. What did the Hellenic Beach do after the collision? A. I believe also I testified that after she hit, I saw her bounce along the stern of our vessel, the starboard quarter, and off in the stern.

Q. Is that what you saw? A. I saw that part, yes.

Q. Did you see any flashing light signal from the Hellenic Beach? A. No, I did not.

Q. Did you, as watch officer, receive any message from the Hellenic Beach? A. I did not.

Q. Did you as watch officer receive any message by flashing light or otherwise, from the Hellenic Beach, that she was to stand by and take off the injured men? A. I did not.

Q. Did you receive any inquiry whatsoever from the Hellenic Beach as to the condition of the Exmouth? A. No.

Q. Did the Exmouth have radar? A. No, no radar.

Q. I show you a folder consisting of 16 photographs and ask you whether those photographs are a fair representation of portions of the Exmouth after the collision. A. (Witness examining photographs) There seems to be

two photos here, Mr. Estabrook; I refer to the one in the engine room—is that right—somewhere along in the engine room; also, this is below decks somewhere, seems to be the storeroom. I did not go down, I did not see that. As far as the others, I did; I would answer yes.

Mr. Estabrook: I offer a folder of 14 photographs as Respondents' Exhibit A, and I am removing the two photographs which the witness cannot identify from the folder. Offered for identification.

(The folder containing 14 photographs referred to was marked Respondents' Exhibit A for identification.)

By Mr. Estabrook:

Q. I show you Libelant's Exhibit 1 for identification, a photostat of the Exmouth's rough deck log, is that correct? A. Yes.

Q. And is that a photostat of a document kept on board the Exmouth in due course of business? A. The word "document," I—

Q. Well, was the logbook of which that is a photostat kept on board the Exmouth in the due course of the ship's business? A. Yes.

Q. And does that logbook contain entries made in your own handwriting which are photostated? A. Yes.

Q. I show you Libelant's Exhibit 2, stated to be a photostat of the Exmouth bellbook. Was the book of which that photostat is a copy, a book kept in the due course of the ship's business on board the Exmouth? A. As to her maneuvering, yes.

Q. And that book is kept in accordance with the regular course of the ship's business? A. Yes.

Q. And does that photostat contain copies of entries made in your own handwriting? A. It does.

Mr. Estabrook: No further questions.

Respondent's Exhibit F

Redirect examination by Mr. Batchelder:

Q. When the collision occurred, what was the visibility? A. At the time of the collision, let me say that the fog was setting in again. The visibility was restricted.

Q. After the collision, did you see the Exmouth after she had cleared your stern? A. The Hellenic Beach?

Q. Hellenic Beach. A. No. When she disappeared off the stern, I did not see her at all.

Q. What would you say the visibility was at that time? A. I am at the time she disappeared off the stern? This again is a rough estimate. I would say a mile or two.

Q. A mile or two? A. Now, this I would like understood: I said she disappeared off the stern. I saw her bounce along the starboard quarter. Now, activity was about, and I did many things during that time, as I say, going down to the boat deck and so forth. So the next time I did look for her, she had disappeared in the fog.

Q. Could you see any lights on either the light vessel or shore objects after the collision? A. I do not recall any. Once again, I want it understood I was not particularly looking for any at that time.

Q. You didn't see the Hellenic Beach after the collision? A. After she disappeared off the stern, I did not.

Q. Was the portion of the deck log reporting the portion of your watch from 2:00 A. M., on and appearing on supplementary page for June 5th, written in your handwriting? A. This is termed an exhibit, the exhibit you have and refer to?

Q. Yes, as Libelant's Exhibit 1. A. The supplementary sheet is in my handwriting.

Q. Do you recall when you wrote that portion of the log? A. Yes, although I can't tell you what time it was. I do recall gathering to write that u[illegible].

Q. When do you think that gathering took place? A. As you know, I have had a chance to review the testimony, some of it. I believe it was stated that it took place about six A. M.

Respondent's Exhibit F

Q. Of the morning of the collision? A. Of the morning of the collision.

Q. Do you now believe that that was about when it took place? A. Yes, I do.

Q. Who was present at this gathering? A. The Master, the Chief Officer, myself, I believe the Junior Third Officer was there, and also the Purser.

Q. Mr. Giffin, has any employee of the respondent American Export Lines asked you to make any modifications to the testimony which you gave before the Coast Guard if you were called upon to testify in this action? A. No, sir. No one has, no one at all.

Mr. Batchelder: That is all.

I, T. M. Phlegar, Court Reporter and Notary Public for the State of Virginia at Large, on April 24, 1952, contacted Mr. Thomas M. Johnston, of the law firm of Hughes, Little & Seawell, stating the necessity of having the witness, Bernard E. Giffin, sign his deposition in the case of Hellenic Lines, Limited, etc., vs. Steamship Exmouth, etc., et al.

Thereupon, Mr. Johnston advised me that he would contact Mr. Garcia of American Export Lines in an effort to locate the witness. Shortly thereafter Mr. Johnston called and stated to me that he had received information from American Export Lines and Bernard E. Giffin had signed off the ship and could not be located.

Having been advised by Mr. Batchelder's office of the necessity of having the deposition in New York by Monday, April 28th, the original deposition and copies are being forwarded, without signature, to the parties as of this date, April 26, 1952.

.....

Notary Public

My commission expires
November 14, 1953.

Stenographer's Fee, $118.00.

Respondent's Exhibit G

FELIX F. MULLNER, called as a witness on behalf of the defendant American Export Lines, being duly sworn, testified as follows:

Direct examination by Mr. Estabrook:

Q. Mr. Mullner, you are now a boatswain's mate, second class, United States Coast Guard, are you not? A. Yes, sir.

Q. Where are you stationed at the present time? A. Atlantic Beach Lifeboat Station, Long Island.

Q. Where were you stationed on June 5, 1949? A. Overfalls Lightship.

The Court: Where?

The Witness: Overfalls Lightship, Lewes, Delaware.

Q. Where is Overfalls Lightship located? A. Just a little over 3 miles off of Hen and Chicken Shoals, off Cape Henlopen.

Q. Is that the entrance to Delaware Bay? A. Yes, sir.

Q. Were you on that lightship on the morning of June 5th? A. Yes, sir.

Q. Were you on watch on that morning? A. Mid to four.

Q. Midnight to 4 a.m.? A. Yes, sir.

Q. What was your duty during that time? A. Well, you have a radio beacon which the ships pick up in case of foggy weather, and all that. It is more or less for your own protection, I mean, somebody is going to run you down, you are sitting out there like a sea gull, anyway.

Q. Were you a lookout or were you officer of the deck, or were you radio operator? A. I was more or less lookout.

The Court: He wants to know what the lightship's function was.

Respondent's Exhibit G

Is that what you want to know, Mr. Estabrook?

Mr. Estabrook: Yes.

The Court: What is the job of the ship there?

The Witness: Well, you check radio beacons, punch the clock, and all that, lookout.

The Court: Why is the ship there?

The Witness: For the fog—I don't know how to put it—as the fog horn and the light, and all that. It is an aid to navigation.

The Court: It is an aid to navigation.

The Witness: That is one way to put it.

The Court: For the benefit of other ships.

The Witness: That's right.

Q. Did you see a collision that morning? A. Yes, sir. About a little after 2, six minutes after 2 o'clock in the morning.

Q. How was the weather then? A. Clear. Visibility was 18 to 20 miles at the time they collided.

Q. Had it been foggy before then? A. Yes, sir.

Q. Was it foggy after that? A. Yes, sir.

Q. How was the wind? A. Offhand, I couldn't tell you.

Q. Now, will you describe in your own words what you saw at that time? A. Yes, sir.

Q. Tell us, please. A. From the time I first seen the Exmouth and—

Q. Yes, exactly what you saw and what you heard. A. Well, the times—this has been three years ago, and the times on that I forget offhand, and—well, the Exmouth was coming out of a westerly direction; we were anchored and the ship swings with the tide, and we were facing in a southerly direction. The Exmouth was coming down this way, westerly, and she come across to the lightship, and for that simple reason I kept my eye on her. I went outside and kept looking; and then after she got in a ways toward the beach there, I noticed the Hellenic Beach com-

ing up; at that time I didn't know what the names of the ships were.

Q. Yes? A. But from that point the Hellenic Beach, she left the pilot off, or something, and she was just starting up out of the mouth of the bay there, and she was coming in a southerly direction, and the Exmouth would just cut across the bow. At that time I think when he left the pilot off and just started off, and from what I seen, the way they was going, I knew about three minutes before they hit, I knew she was going to hit, and, well—

Q. Did you hear any whistle signals? A. Just before they hit, I don't know whether both of them was blowing, or what it was, but they was blowing.

Q. Was it about 10 seconds or 20 seconds before they hit, or a minute? A. Just before they hit. I would say 10, 15 seconds just before they hit.

Q. Now, did you notice any change of course on the part of the Exmouth from the time she left the lightship? A. After she passed the bow of the lightship, she bore a little over to the left, westerly, and she stayed on that.

Q. Did you notice any change of course of the Hellenic Beach? A. No, sir.

Q. Did you notice either ship back down before the collision? A. No, sir.

Q. Do you think you could draw it on this board here, Mr. Mullner? A. The way she was coming, and you know—

Mr. Dow: Excuse me. I would like to preserve that. I want that in my summation, if I could have it.

The Court: Well, could we use the other part of the board then?

Mr. Dow: Could you use the corner of it, or something?

The Court: No, we will get another board then, if we can find one.

While they get the other board, I want to ask the witness one question:

Respondent's Exhibit 6

By the Court:

Q. You say you heard a blast 10 or 15 seconds before the actual collision? A. Yes, sir.

Q. Was that the only blast you heard? A. That is all.

Q. Was there more than one blast? A. They was in a series like—well, like one after the other, you know.

Q. Do you know who was giving the blast? A. No, sir.

Q. From where you were standing you couldn't tell? A. No, sir.

Q. You are sure that the only blast you heard was 10 or 15 seconds before the point of actual collision? A. Yes, sir.

By Mr. Estabrook:

Q. While we are waiting, Mr. Mullner, were you interviewed by our correspondent, Mr. Alspach? A. Yes, sir; from Philadelphia.

Q. Was that on June 9, 1949, four days after the collision? A. Yes—well, I was home at the time when he came up to the house. It was just a couple of days after it happened he come on up.

Q. What lights did you see on the Exmouth? A. When I first seen her?

Q. Yes. A. Port and starboard.

Q. Were they port and starboard running lights? A. Yes, sir; running lights.

Q. And did you see her white lights? A. White lights, masthead lights.

Q. What lights did you see on the Hellenic Beach? A. When she first come up I seen her port light, the red one.

Q. And the mast headlights? A. And the mast headlights.

Q. Mr. Mullner, would you come over here, please?

(Witness complies.)

Respondent's Exhibit G

Q. Now, Mr. Mullner, here is some chalk. I suggest you draw the lightship about in the middle, to start.

(Witness complies.)

Q. Which way is north, Mr. Mullner?

(Witness indicates on blackboard with arrow.)

Q. The lightship was heading south. How was the tide running? A. The tide was running in, because the bow of the lightship, it swings with the tide.

The Court: Can you all hear that? You will have to talk louder, Mr. Mullner. Members of the jury have to hear you, so talk up loudly.

A. When the tide turns, the ship automatically swings with it. It is always headed into the tide. It is never against it, but it is at anchor and it is just riding there.

Q. Now, which way was the Exmouth going? A. Coming this way, westerly.

Q. Show how the Exmouth passed the lightship. A. Well, when I first noticed her she was coming in right, right in this area I would say here; she was coming over this way, and then when she passed the lightship, she just barely, just a little—this is the beach here—that is the Hellenic Beach (indicating on board).

Q. And how far did the Exmouth pass the lightship? A. About less than a third of a mile.

Q. And how far from the lightship do you believe the collision occurred? A. I would say, well, it was a mile off the beach from this point to this point, and just a little over 3 miles, because you got to get that 20 per cent sea pay, you got to be outside the 3-mile limit, so I had to be 3 miles out; right?

Respondent's Exhibit G

The Court: In other words, the lightship was 3 miles—

The Witness: Just a little over 3 miles.

The Court: —off shore.

The Witness: Yes, sir.

The Court: Off the 3-mile limit.

The Witness: That is coming from this point here, from the nearest point, they take out.

Q. And how far was the collision from the lightship, as far as you could tell? A. About 2 miles.

Q. Now, after the collision, could you see what happened? A. Well, as soon as they hit, well, first I seen the lights go out and you could see them with your naked eye.

Q. The lights were which? A. On the Exmouth, went out.

Q. Yes. A. At the time I don't know which ship laid there, you know, but I knew how she was coming and then I heard the crash—that was after I seen the lights go out. It takes time for sound to travel.

Q. Then what happened? A. Then the Hellenic Beach drifted back from toward Harbor of Refuge, and the last time I seen Exmouth, well, she was anchored there; they dropped the anchor, and about 2:30 the fog set in again, so I didn't see them until the next day, next afternoon, I believe it was, when the Exmouth was under her own power again, proceeding to New York, or wherever she was going.

The Court: What is that "X" you just put down?

The Witness: That is where they hit.

The Court: How much offshore do you estimate that to be?

The Witness: What was that, sir?

Respondent's Exhibit G

The Court: How much offshore do you estimate that to be?

The Witness: That is a mile, a little over a mile because it was about two-thirds of the way in from the lightship; you see, from here to here is 2 miles and from here to here is 1 mile. That would bring it just about right.

The Court: Do you all see that?

(Jury nods assent.)

Mr. Estabrook: No further questions.

Cross-examination by Mr. Dow:

Q. You can stay where you are, Mr. Mullner. You are Felix F. Mullner, Jr., aren't you? A. Yes.

Q. You say, Mr. Mullner, that this accident happened about 2 miles off your lightship? A. Yes, a little more than 2 miles I would say.

Q. So there was, from your experience, about 2 miles distance between the Hellenic Beach at that time and your lightship? A. You mean from the point, actual point of collision?

Q. Yes, to the lightship. A. It was about a litle over 2 miles, I would say, just a little.

Q. So there was plenty of room, wouldn't you say, for the Exmouth to go between the Hellenic Beach and the lightship? A. That's right.

Q. In fact, there were 2 whole miles of room: right? A. Yes, sir.

Q. And there was still another mile over on the beach before you got to Hen and Chicken Shoal? A. You can't go in too close there because you got the shoal there.

Q. Right. Now, at the time the Exmouth came up and you saw both her running lights, indicating, I suppose, she was heading right for you, I suppose, right? A. Yes.

Q. You were on the right there? A. Yes.

Respondent's Exhibit G

Q. And just about the position you have got the Exmouth there now, she was steering—what would you say her course would be there? A. Her course—

Q. About 310, 315?

The Court: Don't lead him.

A. I would say about—

Q. This is the Exmouth now. A. About 285, 290. It would be in there some place that I would take it.

Q. So you think it was closer to 300 than it was to 260? A. It was closer to 300 than it was to 260?

Q. Wouldn't you say so, or would you? A. Take a look. A. (After drawing diagram on board.)

The Court: He is figuring it out himself.

A. Yes, it would be closer to 300. There is 270, say, here.

Q. At that point she cleared, on that heading she cleared the lightship? A. Yes, sir.

Q. Then she had two whole miles of room? A. From there?

Q. Up to the— A. Usually when they come in, they come—well, they pass the bow or the stern, it all depends which way the tide is going, and as soon as they pass that they usually swing up, see, but she kept right on going, just bore a little to her left and kept right on going.

Q. That is just the point, Mr. Mulhner. Have you any idea why instead of doing as ships usually do, go on up to the pilot station, why she swung to her left and went across to the other side? A. I don't know.

Q. And from where you were, 2 miles away, you saw the red light of the Hellenic Beach, didn't you? A. Yes, sir.

Q. And you saw her range lights? A. Masthead lights, yes.

Respondent's Exhibit G

Q. Now, at 2 miles away, if the Hellenic Beach went astern, you couldn't have seen it, could you? A. No, sir.

Q. And you heard a series of short sharp blasts; you don't know what ship they came from? A. No.

Q. Did you, after the collision, did you see any blinking? A. Not that I recall. There was no lights of the Exmouth, anyway.

Q. Did you see the pilot boat blinking? A. No, sir; she was up the bay.

Q. You couldn't have seen her if she did? A. Well, if she would have been blinking, I most probably would have seen her, but I was attracted to where the point of collision was. I wasn't, you know, looking around.

Q. You weren't looking up at the pilot boat at the time. A. No, sir.

Mr. Dow: Thank you very much, Mr. Mullner.

The Court: Any further questions by anybody?

Redirect examination by Mr. Estabrook:

Q. Did you notice the Hellenic Beach slow down at all? A. No, sir.

Mr. Estabrook: That is all.

Recross-examination by Mr. Dow:

Q. Excuse me, Mr. Mullner. That prompts one more question. If she would have slowed down or changed her speed at a distance of 2 miles, do you think you would have noticed it? A. Well, against the beach light, yes, you can tell after they leave the pilot off or on, you know, you got the lights on the beach, and it is like a silhouette, whatever you want to call it, and you can tell whether they are moving faster from the time they started, or after they left the pilot off.

Respondent's Exhibit G

Q. And after you heard those alarm whistles, series of blasts, wasn't it? A. Yes.

Q. Could you tell if there was a change of speed in the ships then? A. No, sir; I wouldn't. It just happened they collided right after that.

Mr. Dow: Thank you.

By Mr. Estabrook:

Q. There would have been plenty of room, wouldn't there, for the Hellenic Beach to have come between the lightship and the Exmouth? A. You mean coming out?

Q. Yes. A. Well, there was room all the way around, as far as that goes.

Mr. Estabrook: That is all.

A. (Continuing) This is where they hit; here is your shoals coming in here. You have got to go in here, and if you are any kind of a navigator, he knows what he has to do.

Mr. Dow: Thank you, sir.

(Witness excused.)

Respondent's Exhibit I

(Complaint)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SEAMAN'S ACTION

Plaintiff Demands a Trial by Jury

MIGUEL RIVERA,

Plaintiff,

against

AMERICAN EXPORT LINES, INC., and HELLENIC LINES, LTD.,

Defendant.

ACTION UNDER SPECIAL RULE FOR SEAMEN TO SUE WITHOUT SECURITY AND PRE-PAYMENT OF FEES FOR THE ENFORCEMENT OF LAWS OF THE UNITED STATES FOR THE PROTECTION OF HEALTH AND SAFETY AT SEA.

Plaintiff complaining of the defendants by his attorney, Herman E. Cooper, respectfully shows to this Court and alleges:

AS AND FOR A FIRST CAUSE OF ACTION AGAINST AMERICAN EXPORT LINES, INC., DEFENDANT.

First: Upon information and belief, that at all the times hereinafter mentioned, the defendant, American Export Lines, Inc. was and still is a corporation organized and existing under and by virtue of the laws of the State

Respondent's Exhibit 1

of New York or is duly licensed to do business in the State of New York and maintains an office for the transaction of business within the jurisdiction of this Honorable Court.

Second: That upon information and belief, at all the times hereinafter mentioned, the defendant, American Export Lines, Inc. owned, operated, controlled and managed a certain steamship known as the SS "Exmouth", which steamship is an American vessel flying the American flag.

Third: That the plaintiff, Miguel Rivera, was employed on board said vessel in the capacity of Able-Bodied Seaman on or about June 4, 1949, at an agreed rate of wages and said plaintiff, at all time hereinafter mentioned, was a member of the crew of said vessel SS Exmouth.

Fourth: That on or about June 5, 1949, at approximately 2:00 a. m. while said vessel SS Exmouth was underway near Overfalls Lightship proceeding from New York and bound for Philadelphia, said vessel collided with the SS Hellenic Beach, which vessel, upon information and belief, is owned, operated, controlled and managed by the defendant Hellenic Lines, Ltd.; that said collision between the SS Exmouth and the SS Hellenic Beach was the result of the concurrent negligence of the defendants herein, their officers, servants and employees aboard the said vessels SS Exmouth and SS Hellenic Beach, as more particularly hereinafter related, and as a result of said collision the plaintiff, Miguel Rivera, was caused to sustain and suffer serious personal injuries and damages, as hereinafter set forth.

Fifth: That the plaintiff's injuries were not caused by any neglect or want of care on his part, but solely and wholly by reason of the carelessness and negligence of the defendants herein and the negligence of the officers and

fellow seamen of the plaintiff on board the SS Exmouth and further by reason of the failure of the officers of the SS Exmouth and the SS Hellenic Beach to properly maneuver and navigate their respective vessels so as to avoid said collision.

Sixth: That on the 5th day of June, 1949, at approximately 2:00 A. M. while the SS Hellenic Beach was proceeding out to sea and was passing near Overfalls Lightship in or near Delaware Bay, and while the SS Exmouth was proceeding on its course toward Philadelphia, the said SS Hellenic Beach collided with the SS Exmouth, the bow of said SS Hellenic Beach striking the starboard side of the SS Exmouth approximately amidships and thereafter striking other portions of the starboard side of the SS Exmouth while going astern of the SS Exmouth; that as a result of said collision plaintiff was caused to suffer injuries more particularly hereinafter related; that said collision was the result of the carelessness and negligence of the defendants, American Export Lines, Inc., and Hellenic Lines, Ltd., and the officers and fellow seamen of the plaintiff on board the SS Exmouth and the officers and seamen on board the SS Hellenic Beach in failing to properly control, maneuver and navigate their respective vessels as they approached each other, so as to prevent said vessels from coming into collision with each other; that the officers and fellow seamen of the plaintiff on board the SS Exmouth failed to take the necessary steps and follow the necessary procedures in the navigation of said vessel as it approached the SS Hellenic Beach so as to properly swing the SS Exmouth or stop said vessel or reverse her engines in the time and space necessary to prevent said collision; that the officers in command of the SS Hellenic Beach failed to take the proper steps in the navigation of said vessel so as to avoid said collision; that on the aforesaid date when said collision occurred, the defendant,

Respondent's Exhibit 1

American Export Lines, Inc., failed to properly protect the plaintiff, Miguel Rivera, from suffering the injuries which he sustained as a result of said collision and failed to comply with the General Admiralty law, the statutes of the United States Government pertaining to the operation, management and control of steam vessels, steamship rules of the road and other administrative rules pertaining to the management of said vessel, SS Exmouth, and the navigation thereof, and further failed to comply with the duties and obligations owing to the plaintiff to protect him from the injuries which he sustained and to accord the plaintiff prompt medical care and attention, so as to mitigate and relieve the pain and suffering of the plaintiff, and the defendant, American Export Lines, Inc., failed to comply with the duties and obligations which it owed the plaintiff as a result of all of which plaintiff sustained serious injuries herein and was caused to sustain acute pain and suffering for a prolonged period of time as hereinafter set forth.

Seventh: That by reason of said collision between the aforesaid vessels at the time and place aforesaid, plaintiff suffered injuries to his head, face, body and limbs, including a dislocation of his right hip, injuries to his right knee and a rupture of the quadriceps muscle of his left thigh. As a result of said injuries, plaintiff has been sick, sore, lame and disabled since said collision and has been confined to a hospital for medical care and treatment. Plaintiff has been unable to work or attend to his usual duties as a result of said injuries, and upon information and belief, will never in the future be able to work in the same manner as he did prior to the time of said collision. As a result thereof, plaintiff's earning power will be seriously diminished, all to the damage of the plaintiff, as hereinafter set forth.

Respondent's Exhibit I

Further, plaintiff suffered and will continue to suffer great pain and agony from his injuries and was caused to suffer great pain and agony after said collision as the result of the failure upon the part of officers of the plaintiff on board the SS Exmouth to promptly and immediately summon medical aid, assistance and attention for the plaintiff after they had actual knowledge of the fact that plaintiff was injured in said collision.

Upon information and belief, plaintiff has been permanently injured and will be unable to resume his duties and occupation as a seaman in the American Merchant Marine.

Eighth: That at all times hereinafter mentioned, there was and still is in full force and effect, an Act of Congress binding upon the parties hereto, known as the United States Merchant Marine Act of 1920, Sec. 33, Act of June 5, 1920, Chap. 250, 41 Stat. at Large 1007, U. S. C. A. Title 46, Sec. 688, commonly known as the "Jones Act".

Ninth: That the plaintiff, Miguel Rivera, has been caused to suffer damages in the sum of One Hundred Fifty Thousand ($150,000.00) Dollars by reason of the injuries sustained as aforesaid.

As and for a second cause of action against American Export Lines, Inc., Defendant.

Tenth: Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs "First", "Second", "Third", "Fourth", "Fifth", "Sixth", "Seventh", "Eighth" with the same force and effect as though fully set forth herein.

Eleventh: That upon information and belief, the plaintiff having become injured and ill as aforesaid, it was the duty of the defendant herein to furnish the plaintiff with

prompt medical care, attention and medicines, and to pay for the expenses of the plaintiff's maintenance and cure, and to pay him wages to the end of the voyage and for a time thereafter, for all of which the defendant is obligated by General Maritime Law.

Twelfth: That the defendant has failed and/or neglected and refused to pay to the plaintiff the wages, maintenance and cure hereinabove referred to in Paragraph "Eleventh" while the plaintiff has been incapacitated and the plaintiff has been, and upon information and belief will be incapacitated for a long period of time and as a result thereof, the sum which the defendant is obligated to pay to the plaintiff therefor, upon information and belief amounts to Twenty-five Thousand ($25,000.00) Dollars no part of which has been paid although duly demanded.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST HELLENIC LINES, LTD., DEFENDANT.

Thirteenth: Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs "First", "Second", "Third", "Fourth", "Fifth", "Sixth", "Seventh", "Eighth" "Eleventh" and "Twelfth", with the same force and effect as though fully set forth herein.

Fourteenth: That upon information and belief, the defendant, Hellenic Lines, Ltd., is a foreign corporation maintaining an office for the transaction of business within the jurisdiction of this Honorable Court.

Fifteenth: That by reason thereof, diversity of citizenship exists between the plaintiff, Miguel Rivera, and the defendant, Hellenic Lines, Ltd.; that further, this is an action for a sum of money in excess of Three Thousand ($3,000.00) Dollars; that by reason of the premises, this Court has jurisdiction of the cause of action between the

plaintiff, Miguel Rivera, and the defendant, Hellenic Lines, Ltd.

Sixteenth: That plaintiff suffered injuries as hereinabove set forth as the result of the concurrent negligence of the defendants, American Export Lines, Inc., and Hellenic Lines, Ltd., and the failure of their respective officers on their respective vessels to properly navigate, maneuver and control the aforesaid vessels, thereby causing the collision hereinabove related.

Seventeenth: That by reason of the premises, herein, plaintiff suffered injuries and damages in the sum of One Hundred Fifty Thousand ($150,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants American Export Lines, Inc. and Hellenic Lines, Ltd. in the sum of One Hundred Fifty Thousand ($150,000.00) Dollars for his damages as aforesaid and the sum of Twenty-Five Thousand ($25,000.00) Dollars for his wages, maintenance and cure, making in all a total sum of One Hundred Seventy-Five Thousand ($175,000.00) Dollars, together with the costs and disbursements of this action.

HERMAN E. COOPER
Attorney for Plaintiff
Office & P. O. Address
32 Broadway
Borough of Manhattan
City of New York

IRWIN ASOFSKY and
BERNARD ROLNICK, of Counsel

Respondent's Exhibit I

(Answer of American Export Lines)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civ. 53-207

———o———

MIGUEL RIVERA,

Plaintiff,

against

AMERICAN EXPORT LINES, INC., and HELLENIC LINES, LTD.,

Defendants.

———o———

Defendant, American Export Lines, Inc., by Haight, Deming, Gardner, Poor & Havens, its attorneys, answering the complaint of the plaintiff herein, alleges upon information and belief:

ANSWERING THE FIRST CAUSE OF ACTION AGAINST AMERICAN EXPORT LINES, INC.:

First: Admits the allegations contained in paragraphs First and Third of the complaint.

Second: Denies each and every allegation contained in paragraphs Fourth, Fifth, Sixth, Seventh and Ninth of the complaint.

Third: Admits that at all the times mentioned in the complaint, the defendant, American Export Lines, Inc., owned and managed the s/s Exmouth, which steamship is and was an American vessel flying the American flag, but except as so specifically admitted, denies each and every

allegation contained in paragraph Second of the complaint.

Fourth: Admits that at all the times mentioned in the complaint, there was and still is in full force and effect an Act of Congress known as the United States Merchant Marine Act of 1920, Sec. 33, Act of June 5, 1920, Chapter 250, 14 Stat. at Large 1007, U. S. C. A. Title 46, Sec. 288, commonly known as the "Jones Act," but except as so specifically admitted, denies each and every allegation contained in paragraph Eighth of the complaint.

ANSWERING THE SECOND CAUSE OF ACTION AGAINST AMERICAN EXPORT LINES, INC.:

Fifth: Defendant, American Export Lines, Inc., repeats and realleges each and every admission, denial and denial of knowledge or information hereinabove set forth with the same force and effect as if herein repeated and set forth at length.

Sixth: Denies each and every allegation contained in paragraphs Eleventh and Twelfth of the complaint.

ANSWERING THE FIRST CAUSE OF ACTION AGAINST HELLENIC LINES, INC.:

Seventh: Defendant, American Export Lines, Inc., repeats and realleges each and every admission, denial and denial of knowledge or information hereinabove set forth with the same force and effect as if herein repeated and set forth at length.

Eighth: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs Fourteenth and Fifteenth of the complaint.

Respondent's Exhibit 1

Ninth: Answering paragraph Sixteenth of the complaint, denies any negligence or failure on the part of American Export Lines, Inc.

Tenth: Denies each and every allegation contained in paragraph Seventeenth of the complaint.

FURTHER ANSWERING THE COMPLAINT AND FOR A FIRST, SEPARATE, PARTIAL AND COMPLETE DEFENSE, DEFENDANT, AMERICAN EXPORT LINES, INC., ALLEGES UPON INFORMATION AND BELIEF AS FOLLOWS:

Eleventh: That if plaintiff, Miguel Rivera, suffered any injuries, the same were caused or contributed to by the negligence of said plaintiff.

FURTHER ANSWERING THE COMPLAINT AND FOR A SECOND, SEPARATE, PARTIAL AND COMPLETE DEFENSE, DEFENDANT, AMERICAN EXPORT LINES, INC., ALLEGES UPON INFORMATION AND BELIEF AS FOLLOWS:

Twelfth: That if the plaintiff, Miguel Rivera, suffered any damage herein and is entitled to any recovery against American Export Lines, Inc., by reason of the matters alleged in the complaint, which liability defendant, American Export Lines, Inc., denies, it is by reason of the fault and neglect of defendant, Hellenic Lines, Ltd., its agents, servants and employees, and if any liability for such damage should be adjudged against defendant, American Export Lines, Inc., the defendant, American Export Lines, Inc., would be entitled to indemnity from said defendant, Hellenic Lines, Ltd., and all liability should be borne by said Hellenic Lines, Ltd., instead of defendant, American Export Lines, Inc.

Respondent's Exhibit I

WHEREFORE, defendant, American Export Lines, Inc., demands judgment dismissing the complaint herein as against American Export Lines, Inc., together with the costs and disbursements of this action.

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for defendant, American Export Lines, Inc.

By JAMES M. ESTABROOK,
A member of the firm,
80 Broad Street,
New York 4, N. Y.

INTERROGATORY PROPOUNDED TO PLAINTIFF WHICH HE IS REQUIRED TO ANSWER IN WRITING AND UNDER OATH:

1. Give the names of those persons present at the time and place you were injured.

Respondent's Exhibit I

(Answer of Hellenic Lines, Ltd.)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

———o———

MIGUEL RIVERA,

Plaintiff,

against

AMERICAN EXPORT LINES, INC., and HELLENIC LINES, LTD.,

Defendants.

———o———

Defendant, Hellenic Lines, Ltd. by Dow & Symmers, its attorneys answering the complaint of the plaintiff herein alleges upon information and belief:

ANSWERING THE FIRST CAUSE OF ACTION AGAINST AMERICAN EXPORT LINES, INC., DEFENDANT DENIES:

First: Denies any knowledge or information sufficient to form a belief as to the allegations contained in Articles First, Second and Third of the complaint.

Second: Answering the Fourth Paragraph of the complaint, denies any negligence or failure on the part of Hellenic Lines, Ltd.

Third: Answering the Fifth Paragraph of the complaint, denies any negligence or carelessness on the part of the officers of the SS Hellenic Beach.

Fourth: Answering the Sixth Paragraph of the complaint, denies any carelessness or negligence on the part of the officers and seamen on board the SS Hellenic Beach.

Respondent's Exhibit I

Fifth: Denies each and every allegation contained in Paragraph Seventh of the complaint.

Sixth: Admits that at all the times mentioned in the complaint, there was and still is in full force and effect an Act of Congress known as the United States Merchant Marine Act of 1920, Sec. 33, Act of June 5, 1920, Chapter 250, 14 Stat. at Large 1007, U. S. C. A. Title 46, Sec. 288, commonly known as the "Jones Act," but except as so specifically admitted, denies each and every allegation contained in paragraph Eighth of the complaint.

Seventh: Denies each and every allegation contained in the Ninth Paragraph of the complaint.

ANSWERING THE SECOND CAUSE OF ACTION AGAINST AMERICAN EXPORT LINES, INC., DEFENDANT:

Eighth: Defendant, Hellenic Lines, Ltd., repeats and realleges each and every admission, denial and denial of knowledge or information hereinabove set forth with the same force and effect as if herein repeated and set forth at length.

Ninth: Denies each and every allegation contained in Paragraphs Eleventh and Twelfth of the complaint.

ANSWERING THE FIRST CAUSE OF ACTION AGAINST HELLENIC LINES, LTD.:

Tenth: Defendant, Hellenic Lines, Ltd., repeats and realleges each and every admission, denial and denial of knowledge or information hereinabove set forth with the same force and effect as if herein repeated and set forth at length.

Respondent's Exhibit I

Eleventh: Admit the allegations contained in Paragraph Fourteenth of the complaint.

Twelfth: Admit the allegations contained in Paragraph Fifteenth of the complaint.

Thirteenth: Answering paragraph Sixteenth of the complaint, denies any negligence or failure on the part of Hellenic Lines, Ltd.

Fourteenth: Denies the allegations contained in Paragraph Seventeenth of the complaint.

FURTHER ANSWERING THE COMPLAINT AND FOR A FIRST, SEPARATE, PARTIAL AND COMPLETE DEFENSE, DEFENDANT, HELLENIC LINES, LTD., ALLEGES UPON INFORMATION AND BELIEF AS FOLLOWS:

Fifteenth: That if plaintiff, Miguel Rivera, suffered any injuries, the same were caused or contributed to by the negligence of said plaintiff.

FURTHER ANSWERING THE COMPLAINT AND FOR A SECOND, SEPARATE, PARTIAL AND COMPLETE DEFENSE, DEFENDANT, HELLENIC LINES, LTD., ALLEGES UPON INFORMATION AND BELIEF AS FOLLOWS:

Sixteenth: That if the plaintiff, Miguel Rivera, suffered any damage herein and is entitled to any recovery against Hellenic Lines, Ltd., by reason of the matters alleged in the complaint, which liability defendant, Hellenic Lines, Ltd., denies, it is by reason of the fault and neglect of defendant, American Export Lines, Inc., its agents, servants and employees, and if any liability for such damage should be adjudged against defendant, Hellenic Lines, Ltd.,

Respondent's Exhibit I

the defendant Hellenic Lines, Ltd., would be entitled to indemnity from said defendant, American Export Lines, Inc., and all liability should be borne by said American Export Lines, Inc., instead of defendant, Hellenic Lines, Ltd.

WHEREFORE, defendant, Hellenic Lines, Ltd., demands judgment dismissing the complaint herein as against Hellenic Lines, Ltd., together with the costs and disbursements of this action.

DOW & SYMMERS,
Attorneys for Defendant,
Hellenic Lines, Ltd.

By DAVID H. BATCHELDER, JR.,
A member of the firm,
70 Pine Street,
New York, N. Y.

Respondent's Exhibit I

(Judgment)

DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 53-207

Cal. No.

—o—

MIGUEL RIVERA,

Plaintiff,

against

AMERICAN EXPORT LINES, INC., and HELLENIC LINES, LTD.,

Defendants.

—o—

The issues in the above entitled action having been brought on regularly for trial before the Hon. Edward Weinfeld and a jury, on April 25-28-29-30 & May 1, 1952, and the jury having rendered a verdict in favor of the plaintiff, for $90,000.— and the Court having granted the plaintiff $5110.— for Maintenance and Cure,

ADJUDGED: That the plaintiff have judgment against the defendants for the sum of $95,110.00.

Dated, New York, May 2nd, 1952.

WILLIAM V. CONNELL,
Clerk.

O'G

May 16, 1952—

Plaintiff's costs taxed @ $68.50.

WILLIAM V. CONNELL,
Clerk.

O'G

(SEAL)

See Stip. and Order clarifying judgment.

O'G

Respondent's Exhibit I

(Docket Entries)

At a Slated Term of the United States District Court for the Southern District of New York, held in the United States Court House in the Borough of Manhattan, City of New York on the 25th day of April in the year of our Lord, One Thousand Nine Hundred and Fifty-two.

Present:

HONORABLE EDWARD WEINFELD,
District Judge.

Docket No. Civ. 53-207

———o———

MIGUEL RIVERA,

Plaintiff,

vs:

AMERICAN EXPORT LINES, INC., and HELLENIC LINES, LTD.,

Defendants.

———o———

Now comes the Plaintiff by Herman E. Cooper, Esq., by (Herbert J. De Varco and Bernard Rolnick, of counsel) and moves the trial of this cause. Likewise comes the Defendant by Haight, Deming, Gardner, Poor & Havens, Esqs., by (James M. Estabrook, Walter A. Darby, Jr., of

Respondent's Exhibit 1

counsel), Attys. for Deft. Amer. Export Lines, Inc., Dow & Symmers, Esqs., by (William E. Dow, Jr., of counsel), Attys. for Deft. Hellenic Lines, Ltd.

Thereupon a Jury is duly empaneled and sworn, and the cause proceeds to Trial.

Opening Statements by opposing counsel—Testimony for Plaintiff—Depositions of Stylianos Macris—Dmetrios Legakis, Nicholas Zaecas, Christos Stefanides, Anthony Spithas and Anthony Theotocatos read into the record.

Apr 28 1952—Trial continued.

Apr 29 1952— " " —Plaintiff moves to have the question of "Maintenance and Cure" determined by the Court and not by the Jury—Motion granted—Plaintiff rests—Deft. Amer. Export Lines Inc. moves to dismiss—Deft. Hellenic Lines Ltd. moves to dismiss the case as against itself—Both motions denied—Testimony for Defendants.

Apr 30 1952—Trial continued—Deft. American Export Lines rest—Testimony for Deft. Hellenic Lines (Excerpts from deposition of 3rd Mate Bernard E. Giffin) read.

May 1 1952—Trial continued—Deft. Hellenic Lines rests—Plaintiff rests—All parties rest—Deft. Amer. Export Lines moves to dismiss the complaint and in the alternative moves for a mistrial and a new trial—Motion denied.

Summation—Officers sworn—Jurors retire at 3:20 P. M. and begin deliberations—At 8:55 P. M. the Jurors return a *verdict* for the Plaintiff in the sum of *$90,000.00* against both defendants—Jury polled—Verdict unanimous—

Respondent's Exhibit I

Deft. Hellenic Lines, Ltd. moves to set verdict aside—Motion denied—"*Maintenance and Cure*" *awarded in the amount of $5110.00.*

(An Extract of the Minutes)

WILLIAM V. CONNELL,
Clerk.

O'G

(SEAL)

(Amended Judgment)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civ. No. 53-207

—o—

MIGUEL RIVERA,

Plaintiff,

against

AMERICAN EXPORT LINES, INC., and HELLENIC LINES, LTD.,
Defendants.

—o—

On the subjoined consent of the attorneys for the respective parties herein, the Clerk is hereby directed to enter an amended judgment *nunc pro tunc* as of May 2, 1952, reading as follows:

Respondent's Exhibit 1

"DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 53-207

Cal. No.

———o———

MIGUEL RIVERA,

Plaintiff,

against

AMERICAN EXPORT LINES, INC., and
HELLENIC LINES, LTD.,

Defendants.

———o———

The issues in the above entitled action having been brought on regularly for trial before the Hon. Edward Weinfeld and a jury, on April 25-28-29-30 & May 1, 1952, and the jury having rendered a verdict in favor of the plaintiff for $90,000.00 against both defendants, and the Court having granted the plaintiff $5,110.00 against defendant American Export Lines, Inc. for maintenance and cure, it is

ADJUDGED that the plaintiff have judgment against both defendants for the sum of $90,000.00 on the first causes of action and for the further sum of $5,110.00 against defendant American Export Lines, Inc. on the second cause of action.

Dated, New York, May 2, 1952.

WILLIAM V. CONNELL
Clerk.

HERMAN E. COOPER
Herman E. Cooper,
Attorney for Plaintiff.

Respondent's Exhibit I

Without prejudice to the right of defendants to apppeal from the above judgment.

HAIGHT, DEMING, GARDNER, POOR & HAVENS
Haight, Deming, Gardner, Poor & Havens
Attorneys for Defendant, American Export Lines, Inc.

DOW & SYMMERS
Dow & Symmers,
Attorneys for Defendant, Hellenic Lines, Ltd.

SO ORDERED:

EDWARD WEINFELD,
U. S. D. J."

May 19 1952

W O'C

O'G

RESPONDENT'S EXHIBIT P

(p. 139a)

70 Answering Philadelphia June 4 P.M. 1949

Average — C PS
M SS

Bells	Time	BELLS	TIME
Stand By @	9 09		
4	9. 34		
III	9. 37		
St. by	9. 37		
4	10. 09		
X	10. 09		
III	10. 11		
L	10. 12		
X	10 14		
LI	10. 14		
X	10. 15		
F. W. E.	10. 22		

C. 70088390
M. 0674650
SS 17'7"
PS. 22' 4"

AT ANCHORAGE
June 5th 1949 A.M.
STD. BY - 1:42 ~~P.M.~~ A.M.

X	10. 09	
III	10. 11	
L	10. 12	
X	10 14	
LI	10. 14	
X	10. 15	
F. W. E.	10. 22	

C. 70088390
M. 0674650
SS 17'7"
PS. 22' 4"

AT ANCHORAGE
June 5th 1949 A.M.
STD. BY - 1:42 ~~P.M.~~ A.M.

C- 70088530
M- 0675040
P.S. 22'4"
S.S. 17'2"

L	1 50	
LI	1 51	
X	05	

R-P

Respondent's Exhibit J

Exmouth rough bridge log.

(See opposite ☛)

Note

Page 131a is on Card 10

Respondent's Exhibit K

Exmouth bridge bell book.

(See opposite ☛)

RESPONDENT'S EXHIBIT K

(page 133a)

2	41	44 Pilot away
	42	Departure
8	31	S.B.E. Log getting in
8	36	4 Thick fog
9	09	4 S.B.E. 4 of them
9	34	4
9	37	4 S.B.E.
10	09	4 X
10	11	4
10	12	4
10	14	X 4
10	15	X Dropped anchor
		3 shackles in water
10	22	F.W.P.
A.M.		JUNE 5, 1949
1	42	SBE Commenced to anchor
	50	4
	51	44 Secured
2	05	Collision ⊗

3	00	Commence heaving #4 A
3	00	Let go Stbd. I
		Lookout: QUIGLEY
		Wheel: WHITNEY
3	20	Storeroom & Refridgerator rooms secured.

Respondent's Exhibit M

ABSTRACT FROM CLINICAL RECORD

Register No. 204667 Date abstracted July 7, 1949

1. Regnar F. Eklund
2. 43-30—48th St., N. Y. (L. I.)
3. A.S.
4. 9-19-1891
5. SS Exmouth Amer. Export.
6. Hospital care furnished from June 13, 1949 to June 24, 1949. Outpatient care furnished from
7. Number of days disabled: (a) Partially
   (b) Totally During hospital stay.
8. HISTORY SUMMARY including patient's statement as to how and when disability incurred: The attached Discharge Summary is to be used in lieu of a Clinical Abstract.
9. EXAMINATION SUMMARY including pertinent laboratory data and X-ray findings:
10. DIAGNOSIS: 1. Concussion of brain
    2. Anxiety state.
11. CONDITION UPON DISCHARGE including reason for discharge: Improved.
12. REMARKS:

.....
Bengt Hamilton
Medical Director, USPHS (or)
Clinical Director

Station—U. S. Marine Hospital
Location .....

Respondent's Exhibit M

6/13/49 6/24/49

Patient is a 57 year old white AS who was admitted to Neurological Service on 6/13/49. While aboard ship on 6/8/49, during a fog the ship was involved in a collision with another ship and the patient was thrown against the bulkhead striking his head and right side of the body. He states he was unconscious for about half a minute, and subsequently was dizzy and confused. However, patient was able to ambulate and return to his home for bedrest. He subsequently developed very severe headaches in the occipital region and left temporal region, 2 days after the accident and also developed uncontrollable tremors of the arms and legs. These seemed to be worse on the right side. On reaching for object patient also had an intention tremor. There are no visual disturbances. The patient apparently felt that he was confused and dazed. There was some difficulty in walking because of the persistent dizziness which was of the subjective type. The headache was continuous, dull, aching in type and did not radiate. Because of the persistence of these symptoms patient was subsequently admitted to the hospital 6/14/49.

Examination on admission revealed the patient to be very apprehensive and anxious and had a very obvious course intention tremor.

Laboratory and touch sensation were intact but there was some weakness of the upper and lower right extremities. X-rays of the skull and lumbo-sacral spine were essentialiy negative. On 6/20/49 patient was seen in Neurosurgical Consultation and it was noted that the above described tremors had improved. Cranial nerves were intact, there was no nystagmus. There was a tremor however of the tongue, both hands and lower extremities. All the deep tendon reflexes were equal and normal and there were no pathological reflexes noted. Sensation was intact through-

Respondent's Exhibit M

out. There was mild tremor at rest and also intention tremor. Ataxia was also noted and patient had adiadokokinesis. Impression by the Neuro-surgical Consultant was that patient probably had an anxiety state and also some mild diffuse degenerative lesion of the cerebellum and extrapyramidal system. On 6/21/49 patient was transferred to the Surgical Service because of the persistence of headaches, dizziness, tremors, etc. Patient received sedation and psycho-therapy and was reassured on frequent and numerous occasions. There was a marked improvement on this regime. The tremors rapidly subsided, patient's tense and apprehensive state also subsided.

Remaineder of hospital stay was essentially uneventful.

Discharged: 6/24/49

Condition: Improved

Prognosis: Good, 2 weeks convalescence

Diagnosis: 1. Concussion of brain
2. Anxiety state.

DR. P. ZITO

JT
Eklund, Regnar 204667 AB-1

Respondent's Exhibit O

Photograph of Exmouth collision damage.

(See opposite ☛)

Note

Page 137a is on
Card 10

Respondent's Exhibit P

Exmouth engine room bell book.

(See opposite ☛)

Log of the S. S. EXMOUTH

(Page 131a – last) from Tacoma to Kiu ... to Hilo via Honolulu (p. 131a-last c) Date Sunday JUN 5 1949

HOUR	LOG	COURSE Stand	COURSE Steering	WIND Direct	WIND Force	BAROMETER	TEMPERATURE Air	TEMPERATURE Water	STAND. COMP. Var.	STAND. COMP. Dev.	R. P. M.
A. M. 1											
2											
3											
4		at anchor		S'ly	1	29.92	65°				
5											
6											
7											
8		at anchor		Calm		29.90	67				
9											
10											
11											
12		At Anchor		S'ly	1-2	29.89	74				

LATITUDE	LONGITUDE	COURSE	LENGTH DAY	DISTANCE OBS.	DISTANCE D. R.	DISTANCE TOTAL	AT SEA	AVGE. SPEED

HOUR	LOG	COURSE Stand	COURSE Steering	WIND Direct	WIND Force	BAROMETER	TEMPERATURE Air	TEMPERATURE Water	STAND. COMP. Var.	STAND. COMP. Dev.	R. P. M.
P. M. 1											
2											
3											
4	048	0	036°	SSE	1-2	29.81	71°				
5											
6											
7											
8	038			S'ly	1	29.80	68				
9 19	030		022								
10 41	360		352								
11 25	002		354								
12	002		354	SE	1	29.77	66				

RUNNING LIGHTS	TANKS No.	TANKS A.M.	TANKS P.M.	BILGES No.	BILGES A.M.	BILGES P.M.	WHEEL Hours	WHEEL Name	LOOKOUT Name
Burning									
Midnight to 205 A.M.					0		12-2	Rivera	Whitney, Buckley
Sunset P.M. to Midnight					2		2-4	Fehlner	Quigley
Other Lights					0		4-6	Kilgman	Morgator
Deck anchor lights						0	6-8	Morgator	Kilgman
							8-10	Burdny	Lugo & Teixeira
					0		10-12	Lugo & Teixeira	Burdny
						0	12-2	Fehlner	Quigley
						0	2-4	Whitney	Buckley
							4-8	Kilgman	Morgator & Burdny
							8-10	Lugo & Teixeira	Lugo & Burdny
							10-12	Burdny	Teixeira

REMARKS

1442 S.B.E. Fog dispersed, Commenced heaving anchor 1451 Anchor aweigh, full speed - various courses to Pilot Station 2200 anemometer 4/0 @ Sdld. side close by SEE SUPPLEMENTARY PAGE.

405 Coast Guard inward & outward. 427 Tested steering apparatus - all found in working order. 435 Pilot 4/0. 455 Smooth & 1. 455 Coast Guard inward away, with injured seamen M. Rivera - A.B. and C. Carlson - Ordinary Seaman. Engineers ballasting ship and preparing. Awaiting fog & lift. - Dense fog. Fog signals sounded & extra lookout posted. Calm sea. F.O.C.

Vessel at anchor due to dense fog. Fog signals sounded
1200 Overcast, dense fog, smooth sea. Swell S.E. swell P.C.C.

SET & DRIFT	STEAM—LBS.	REV. PER MIN.	FUEL CONSUMED	FUEL PER KNOT	FUEL REMAINING	DIST. BY ENG.	ENG. KNOTS per HR.	PROPELLER SLIP

1249 Pilot away. 148 S.B.E. fog lifting, commence heaving anchor 204 Anchor aweigh 205 S.B.E. fog - all precautions observed. 220 Let go port anchor 232 F.W.E. 256 S.E.E. fog clearing, commence heaving anchor 321 Anchor aweigh, full speed 4/0 081°T 1748 Departure, buoy-tender 4/0 @ 324 MC Chic Shoal buoy @ 4/0 048°T. Partly cloudy. Slight SE'ly sea, Low swell. PCC.

408 Buoy "3FB" abeam close to @ 4/0 to 038° 542 fog setting in & S.B.E. 546 Half speed. 554 Stop engines 562 Let go port anchor 3 shackles in 10 fathoms water. 725 Fog lifting 732 S.B.E. & start heaving up anchor. 740 Anchor aweigh 745 Full ahead. Overcast - good visibility. Slight SE sea & swell. F.O.C.

806½ S.B.E. Fog setting in 807 Stop. Var. bells in anchoring 812 Let go Port anchor 3 Shackles 2½ fathoms 85 Fog clearing 905 Commenced heaving in anchor. 910½ Anchor aweigh, full speed 912 Brigantine Stratmoyo a/c 300 Var 16 27 S.B.E. Buoy abeam 1040 Fog Cleared 1045 Full ahead 1110 4/0 Barnegat Lt. vessel a/c 360° Var 16 27 S.B.E. 1200 Partly Cloudy, Slight SE sea & swell. P.C.C.

DRINKING WATER Tank	Last Filled	Inches	Long Tons

REFRIGERATION Compartment	Temperature

HOLD TEMPERATURES	1	2	3	4	5	6	7
A. M.							
4							
8							
12							
P. M.							
4							
8							
12							

Chief Officer. R. Eklund Master.

SUPPLEMENTARY PAGE
FOR JUNE 5, 1949

(Page 131a - Part 3)

to _____ Date _____

REMARKS

2.00 from Overfalls L/V abm. stbd. side steering by. While proceeding to Pilot Station, and vessel being maneuvered by Master, to pick up pilot, an unknown vessel which had been reported to the bridge a few minutes previously, was found to be rapidly bearing down upon us on our starboard bow. As soon as the danger of collision was recognized, danger signals were blown, and maneuvers made to avoid collision.

At 2.05 A.M. the unknown vessel struck our stbd. side at the after end of the amidships house with her bow and bounced off, striking the bulwark aft. A stop bell was given immediately and the crew was mustered at boat stations while extent of damage was being ascertained. The unknown vessel failed to stop and identify herself, or to offer any assistance.

The anchor was dropped. The vessel's lighting went out and was restored in a very few minutes. First aid treatment was given to

SET & DRIFT	STEAM—LBS.	REV. PER MIN.	FUEL CONSUMED	FUEL PER KNOT	FUEL REMAINING	DIST. BY ENG.	ENG. KNOTS per HR.	PROPELLER SLIP
The injured crew members who were later removed to shore by Lewis Station Coast Guard Launch. RCH.								

R E Eklund

Bilge Soundings

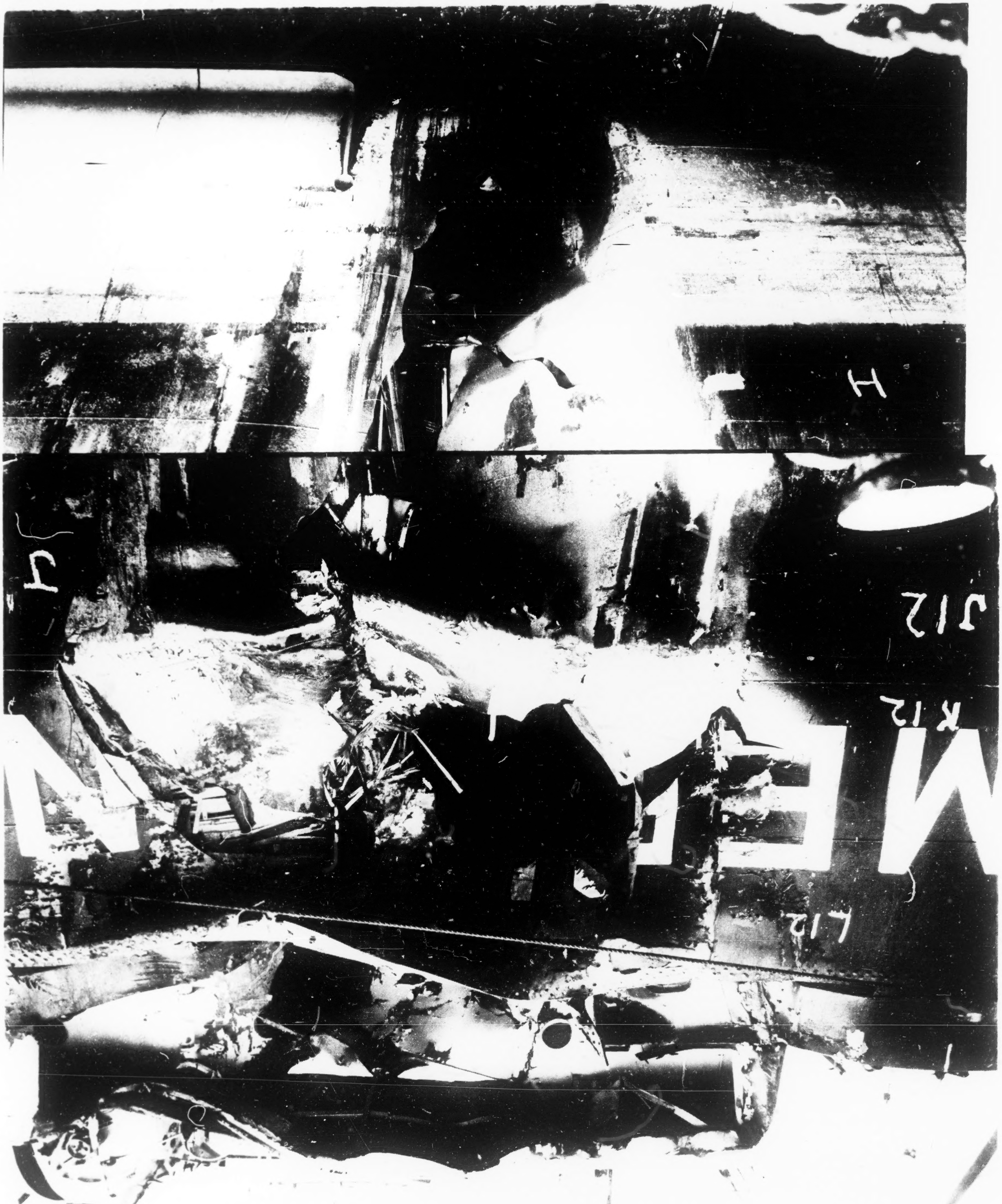
	#4P	#4S	#5
9 00 PM	0	2½	0
10 00 PM	6'	0	0
11 00 PM	6'	0	0
12 00 Noon	6'	0	0
1 00 PM	6'	0	0
2 00 PM	6'	0	0
3 00 PM	6'	0	0
4 00 PM	6'	0	0
5 00 PM	6'	0	0
6 00 PM	6'	0	0

DRINKING WATER				REFRIGERATION					HOLD TEMPERATURES									
Tank	Last Filled	Inches	Long Tons	Compartment	Temperature					1	2	3	4	5	6	7		

2 00 PM	6'	0	0
3 00 PM	6'	0	0
4 00 PM	6'	0	0
5 00 PM	6'	0	0
6 00 PM	6'	0	0

DRINKING WATER				REFRIGERATION					HOLD TEMPERATURES									
Tank	Last Filled	Inches	Long Tons	Compartment	Temperature					1	2	3	4	5	6	7		
									A. M.									
									4									
									8									
									12									
									P. M.									
									4									
									8									
									12									

Chief Officer. *Master*



Office - Supreme Court, U.S.
FILED
APR 1 1 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957

No. 922

AMERICAN EXPORT LINES, INC., as Owner of S/S EXMOUTH,

Petitioner,

THOMAS KENWORTHY'S SONS, et al.,

Cargo Intervenors,

against

S/S HELLENIC BEACH, her engines, boilers, etc., and HELLENIC LINES, LTD.,

Respondent.

HELLENIC LINES, LTD., Owner of S/S HELLENIC BEACH,

Respondent,

against

S/S EXMOUTH, her engines, boilers, etc., and AMERICAN EXPORT LINES, INC.,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

KENNETH GARDNER,
Counsel for Petitioner.

JAMES M. ESTABROOK,
WALTER A. DARBY, JR.,
of Counsel.

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FEDERAL RULES OF CIVIL PROCEDURE:

Rule 52(a)	3
Rule 54(c)	3, 7, 8

STATUTES:

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MISCELLANEOUS:

Restatement of Judgments (1942) § 68, p. 300 ... 8

Who's Who in America, 1956-57, p. 475 7

IN THE

Supreme Court of the United States

October Term, 1957

No.

AMERICAN EXPORT LINES, INC., as Owner of S/S EXMOUTH,
Petitioner,

THOMAS KENWORTHY'S SONS, et al.,
Cargo Intervenors,

against

S/S HELLENIC BEACH, her engines, boilers, etc., and HELLENIC LINES, LTD.,
Respondent.

HELLENIC LINES, LTD., Owner of S/S HELLENIC BEACH,
Respondent,

against

S/S EXMOUTH, her engines, boilers, etc., and AMERICAN EXPORT LINES, INC.,
Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above-entitled consolidated cases on January 15, 1958.

Citations to Opinions Below

The opinion of the District Court (R. 282) printed in Appendix A hereto (p. 13) is reported in 134 F. Supp. 546. The opinion of the Court of Appeals (R. 140a) reversing the opinion of the District Court is not yet reported and is printed in Appendix B hereto (p. 23).

Jurisdiction

The judgment of the Court of Appeals was entered on January 15, 1958 (R. 153a). The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Questions Presented

1. Where the question of liability as between two ships involved in a collision has first been determined by a jury who heard the testimony and observed the witnesses and secondly been determined by a District Court Judge who also heard the testimony and observed the witnesses, may the Court of Appeals disregard these previously determined issues and reverse the decision?

2. May the Court of Appeals reverse on the facts two separate findings by the District Court, one also by a jury, that the violation of the Rules of the Road by the Hellenic Beach contributed to the collision?

3. May the Court of Appeals overrule the Supreme Court by mitigating the effect of a statutory violation by a colliding vessel?

4. May the Court of Appeals rely on the testimony of a witness not believed by the District Court?

Statutes Involved

The statutes involved are 33 U. S. Code 112, 33 U. S. Code 121, Rule 54(c) of the Federal Rules of Civil Procedure; 28 U. S. Code and Rule 52(a) of the Federal Rules of Civil Procedure which are set forth in fail as follows:

32 U. S. Code 112 (International Rule 27). In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.

33 U. S. Code 121 (International Rule 29). Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

Federal Rule of Civil Procedure 54(c), 28 U. S. Code. Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

Federal Rule of Civil Procedure 52(a). In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard

shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

Statement

On June 5, 1949, shortly after two o'clock in the morning, the s/s Hellenic Beach, owned and operated by Hellenic Lines, Ltd., collided with the s/s Exmouth, owned and operated by American Export Lines, Inc., near the entrance to Delaware Bay.

The Exmouth was proceeding in a westerly direction. The course of the Hellenic Beach was about southeast by east, so the vessels were in a crossing situation with the Hellenic Beach on the Exmouth's starboard bow.

While under the Rules of the Road (International Rule 19, 33 U. S. C. 104), the Exmouth was the burdened vessel in a crossing situation and had the obligation to keep out of the way of the Hellenic Beach; nevertheless the Hellenic Beach also had the obligation to navigate with due regard to all dangers of collision and to observe precautions required by ordinary practice of seamen. As the vessels approached one another the Hellenic Beach Captain saw the Exmouth about a mile and a quarter away and saw that a crossing situation existed (R. 43). In spite of this situation, the Master of the Hellenic Beach waited until the vessels were one-half mile apart (R. 62) and then blew a one-whistle signal which under International Rule 28 (33 U. S. C. 113) means:

"I am directing my course to starboard."

In spite of this whistle signal, the Hellenic Beach made no change of course but continued on her course at full speed (R. 63).

When the vessels were about one-quarter of a mile apart, the Hellenic Beach blew another one-blast signal (R. 59). At this time, the Hellenic Beach still had not reduced her speed, nor altered course in accordance with her own signal, when it was apparent that, if she had maneuvered in accordance with her own signals, she would have avoided the collision. Nevertheless, although the vessels were then *in extremis*, the Master of the Hellenic Beach did nothing to avoid a collision until he heard a two-blast signal from the Exmouth, and then he ordered his helm hard right and signalled for full astern (R. 45).

This was twice found once by a jury in the Southern District of New York and again by the judge in the Eastern District of New York to be a violation of the rules contributing to the collision.

A seaman, on board the Exmouth, Miguel Rivera, was injured in the collision. He brought an action in the United States District Court for the Southern District of New York against American Export Lines, Inc., and Hellenic Lines, Ltd. His complaint (R. 109a) set forth identical causes of action against American Export Lines, Inc., and Hellenic Lines, Ltd., i.e.:

> "* * * that said collision was the result of the carelessness and negligence of the defendants, American Export Lines, Inc., and Hellenic Lines, Ltd., and the officers and fellow seamen of the plaintiff on board the SS EXMOUTH and the officers and seamen on board the SS HELLENIC BEACH in failing to properly control, maneuver and navigate their respective vessels as they approached each other, so as to prevent said vessels from coming into collision with each other * * *."

The answer of Hellenic Lines, Ltd., and the answer of American Export Lines, Inc., were identical in setting forth affirmative defenses claiming indemnity from each other with respect to Rivera's claim (R. 116a and 120a).

Prior to the trial of the *Rivera* action, the proctors for the Hellenic Lines had pressed for the admission of certain testimony, taken in the case at bar, into the proceedings of the *Rivera* case. It was the contention of Hellenic Lines proctors that the issues were identical in the personal injury case and the collision case. Judge Leibell of the United States District Court for the Southern District of New York, in his opinion, *Rivera* v. *American Export Lines, Inc., and Hellenic Lines, Ltd.*, 13 F. R. D. 27, 28 (S. D. N. Y. 1952), stated in allowing the use of this testimony:

> "The same set of facts and circumstances operated to bring about the collision, which resulted in damage to the vessels and the injuries to the plaintiff."

The jury heard the evidence as presented by the witnesses for both vessels. A pre-trial order consented to by Hellenic Lines, Ltd. presented as one of the issues the question of the faulty navigation of the Hellenic Beach. The same facts and circumstances operated to bring about the one collision which resulted in both damages to the vessels and injuries to the plaintiff.

The jury, upon hearing the evidence, found and determined that both vessels were at fault and a verdict was so entered. Neither defendant appealed.

Subsequently the issue of collision was tried in Admiralty in the United States District Court for the Eastern District of New York. There the Hellenic Beach master testified in person. The District Court found his testimony was not creditable (R. 290). The trial court found independently that both vessels were at fault and also stated in his opinion, regardless of his independent finding, that the decision of the jury would have been dispositive of the matter (R. 202).

The findings of the District Court were reversed on appeal to the Circuit Court of Appeals for the Second Circuit and this Petition for a Writ of Certiorari is made herewith.

Reasons for Granting the Writ

1. The decision of the Court below is in direct conflict with the decisions of this Court: *Commissioner* v. *Sunnen*, 333 U. S. 591 (1947); *Heiser* v. *Woodruff*, 327 U. S. 726, 60 S. Ct. 853, 90 L. Ed. 970; *Partmar Corporation, et al.* v. *Paramount Pictures Theatres et al.*, 347 U. S. 89, 74 S. Ct. 414, 98 L. Ed. 532, which held that matters which were actually litigated and determined between the parties cannot later be relitigated. In the *Rivera* case, the sole issue to be considered by the jury, aside from damages, if any, to be awarded to the plaintiff, was to determine if either, or both, of the vessels were at fault. In order for either vessel owner to escape liability, it was necessary to prove the fault of the other vessel.

Chief Judge Clark of the Court below recognized the obvious merit of this when he stated in his dissenting opinion (R. 149a):

> "In addition, the prior verdict and judgment in Rivera v. American Export Lines, Civ. No. 53-207, D. C. S. D. N. Y., May 2, 1952, clearly established the Hellenic's negligence, and that finding should be *res adjudicata* in this case."

Chief Judge Clark also recognized that the majority opinion completely disregarded the expressed intent of the Federal Rules of Civil Procedure, particularly Rule 54(c) which states its purpose to be that " * * * every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled even if the party has not demanded such relief in his pleadings." Judge Clark is a leading expert in Federal Judicial Procedure. He taught pleading and procedure and has written extensively on the subject, Who's Who in America, 1956-57, p. 475. He has been a member of and reporter for this Court's advisory Committee on Federal Civil Procedure since it was organized in 1935. His appointment was presumably in recog-

nition of his learning in this field and of the articles on "Federal Civil Procedure" which he and Professor Moore, author of Federal Practice, published at 44 Yale L. J., 387, 1921. In the *Rivera* case, each defendant (American Export Lines, Inc., and Hellenic Lines, Ltd.) pleaded the other's negligence in the answers, adding "and if any liability for such damage should be adjudged against defendant" then indemnity should be granted against the other defendant. The answers of the two defendants in the *Rivera* case set the parties as adversaries. The pleadings were such as to more than come within the scope of Rule 54(c). In *Esso Standard Oil Co.* v. *United States, et al.*, 174 F. 2d 182 (C. C. A. 2), the same lower court held that:

> "We may add that the equitable treatment of parties by courts of admiralty and the early abandonment in equity of the former requirement that a claim to affirmative relief be set up in a cross-bill makes us unwilling to treat the situation here as a mere matter of formal pleading. Corcoran v. Chesapeake & Ohio Canal Co., 94 U. S. 741, 24 L. Ed. 190."

As a result, the Court allowed an answer to act as a cross-libel.

When Chief Judge Clark stated that, in his opinion, the *Rivera* case was dispositive of the instant case it would be a little too much to think that Judge Clark did not know what he was doing.

That certain defenses in the *Rivera* case, such as the major-minor fault rule, were not raised is not a bar to the conclusiveness of the collateral estoppel for as the Restatement of Judgments (1942) points out, § 68, page 300:

> "The failure of the defendant to interpose a defense in the prior action which resulted in a judgment against him, precludes him it is true, from relying upon that defense thereafter in so far as the same cause of action is concerned."

It is apparent from the decision of the Circuit Court of Appeals, that it ignored the clear intent of the Federal Rules of Civil Procedure, the decisions of the Supreme Court and a principal basis of American jurisprudence that an issue having been tried, it cannot be relitigated.

The issues in the instant case having been twice tried, once by a jury in the *Rivera* case, and once by the District Court for the Eastern District of New York, the Appellate Court cannot consider the weight of the evidence, but must limit itself to the correction of errors of law. The issues having been twice tried, the reviewing court cannot search the record to determine conflicting claims, or which of conflicting theories is correct. As the United States Court of Appeals, Ninth Circuit, succinctly stated in *Farley* v. *United States of America*, 252 F. 2d 85:

> "Trials *de novo* in admiralty on appeal, in discard for many years expired with *McAllister* vs. *United States*, 348 U. S. 19."

2. The jury in the *Rivera* case found that the Hellenic Beach was liable for faulty navigation and held her 50% at fault. The District Court independently found the Hellenic Beach guilty of faulty navigation, specifically of violating International Rules, Articles 27 and 29 (33 U. S. C. sections 112 and 121 respectively) (R. 289).

In *The Pennsylvania*, 86 U. S. 125, 136, this Court stated the rule to be:

> "• • • the burden rests upon the ship of showing not merely that her fault might not have been one of the causes, but that it could not have been. Such a rule is necessary to enforce obedience to the mandate of the statute."

Both the jury in the *Rivera* case and the Judge in the District Court found, after hearing and observing the witnesses, that the Hellenic Beach not only was at fault but

had failed to sustain the burden of proving that her fault did not contribute to the collision.

It is submitted that the Court of Appeals exceeded the powers of an appellate tribunal when it substituted its findings of fact over the findings of two lower courts of competent jurisdiction.

3. The statutory fault of the Hellenic Beach was found by the jury in the *Rivera* case, was found by the judge in the trial in the District Court and then completely disregarded by the Court of Appeals which, without the benefit of hearing or observing the witnesses, stated that the evidence was clear that the Hellenic Beach was free from fault.

This Court in *Kernan, Administrator* v. *American Dredging Co.*, 355 U. S. 426, held that a violation of a rule of navigation created liability without negligence.

Chief Judge Clark, in his dissenting opinion (R. 149a), recognized that the "court below, obviously in a much better position than we to judge the credibility of the testimony, determined that the navigator of the Hellenic depended unjustifiably on the expected action of his opposite number and continued without slackening speed after he was or should have been aware of the danger."

The Court of Appeals in its decision, without a full appreciation of the testimony in two lower courts of competent jurisdiction, not only mitigated the effect of a statutory violation (33 U. S. Code 112 and 33 U. S. Code 121) but disregarded it entirely.

4. The testimony of the master of the Hellenic Beach was read into evidence in the *Rivera* case and the jury didn't believe it and found the Hellenic Beach at fault. The master of the Hellenic Beach was flown from his then command to testify at the trial in Admiralty in the District Court (R. 52). The judge after hearing his testimony and

observing his demeanor on the stand did not believe his testimony (R. 290).

In the face of this clear mandate from the two lower courts of competent jurisdiction, the majority opinion of the Court of Appeals relying entirely upon the testimony of this discredited witness, reversed the decision. Clearly this is error. *McAllister* v. *United States*, 348 U. S. 19; *Ferguson* v. *Moore McCormack Lines, Inc.*, 352 U. S. 521, 77 S. Ct. 457.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

KENNETH GARDNER,
Counsel for Petitioner.

JAMES M. ESTABROOK,
WALTER A. DARBY, JR.,
of Counsel.

Appendix A

(Opinion of Rayfiel, *D. J.*)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

—o—

A. 19244

HELLENIC LINES, LTD., owner of SS HELLENIC BEACH,
Libelant,

vs.

SS EXMOUTH, her engines, boilers, etc., and AMERICAN EXPORT LINES, INC.,
Respondents.

A. 19486

AMERICAN EXPORT LINES, INC., as Owner of the SS EXMOUTH,
Libelant,

vs.

SS HELLENIC BEACH, her engines, boilers, etc., and HELLENIC LINES, LTD.,
Respondents.

—o—

Appearances:

DOW and SYMMERS, Esqs., Proctors for Hellenic Lines, By WILBUR E. DOW, JR., Esq., Advocate.

HAIGHT, DEMING, GARDNER, POOR and HAVENS, Esqs., Proctors for American Export Lines, By JAMES M. ESTABROOK, Esq., and WALTER DARBY, Esq., Advocates.

BIGHAM, ENGLAR, JONES and HOUSTON, Esqs., Proctors for Petitioners, By CHARLES A. VAN HAGEN, JR., Esq., Advocate.

Before: Rayfiel, *J.*

Shortly after 2:00 A. M., on June 5, 1949, a collision took place between two vessels, the "Exmouth" and the "Hellenic Beach" in the vicinity of Overfalls Lightship, at the mouth of Delaware Bay. The "Exmouth" was bound from New York to Philadelphia, with 300 tons of cargo aboard; the "Hellenic Beach" was bound from Philadelphia to New York, and was carrying 5000 tons of cargo.

The "Hellenic Beach" filed a libel against the "Exmouth", which, in turn, filed its cross libel. The owners of the cargo on board the "Exmouth" intervened, and the parties stipulated "That if the suit and the cross suit between the owners of the SS Exmouth and the SS Hellenic Beach should result in a decision of sole fault on the part of the Hellenic Beach, or mutual fault on the part of both vessels, that the cargo intervenors shall be entitled to an appropriate interlocutory decree in their favor * * *."

The "Exmouth" was a vessel of the type known as a Victory ship. She was 439 feet long, with a beam of 63 feet. Her engines developed 8500 horsepower, which gave her a maximum speed of about 17 knots. The "Hellenic Beach" was of the type known as a Liberty ship. She was 422 feet long, with a beam of 57 feet. Her engines developed 2500 horsepower, which gave her a top speed of about 10½ knots.

While it had been foggy earlier that night, the visibility at the time of the collision was about five miles. There was some wind, a slight swell, and the tide was at flood, running northwest at over two knots.

The "Exmouth" had run into the fog earlier that night, and had anchored about a mile southwest of Overfalls Lightship. At about 1:42 A. M., the fog having lifted, she heaved up anchor. At about 1:51 A. M. she was under way at her full maneuvering speed, which was about 12 knots, and proceeded on a course of about 285 degrees past the Overfalls Lightship. Her master, Captain Eeklund, was on her bridge, directing her navigation. With him were the

third mate, Bernard E. Griffin, who was the officer on watch, and Whitney, the helmsman. The first officer and a lookout man were at the bow, acting as lookouts.

The "Hellenic Beach" had dropped her pilot at 1:50 A. M. At 1:52 A. M. the order was given for full speed ahead, and she proceeded on a course of 124 degrees true to pass Overfalls Lightship on her left. She was being navigated from her flying bridge by Captain Macris, her master. With him were the second mate and a helmsman. A lookout was stationed on the forecastle.

Captain Ecklund testified that just as he passed the Lightship he ordered the helmsman to swing left to 311 degrees, and then went into the chartroom for a few seconds. When he emerged from the chartroom he saw a vessel which proved to be the "Hellenic Beach". He observed her masthead light, range light and red port side light bearing about 45 degrees on his starboard bow, and about a mile off. He stated that he ordered the helmsman to swing hard left, and he blew two sharp blasts of the whistle, thinking that the vessels would cross port to port. Instead of carrying out his order the helsman said "You mean right captain," and the third mate (Griffin) said "hard right, hard right" (S. M. p. 117), which Captain Ecklund testified that he did not want, and ordered the helmsman to go hard left, with which order he complied. At that point the "Hellenic Beach" was bearing down on the "Exmouth" which, almost immediately thereafter, she struck at the Number 4 Hold.

Griffin, the "Exmouth's" third mate, called as a witness by the "Hellenic Beach", testified that shortly after the "Exmouth's" anchor was heaved up and she was proceeding at full maneuvering speed, steadied on a course of 290 degrees, he saw the lights of another vessel (the "Hellenic Beach") which was coming down from the direction of the pilot station. He estimated she was then about three of four miles from the "Exmouth". He stated that he saw her masthead, range and red port side lights; that there-

after the "Exmouth" passed the Lightship about a quarter of a mile off, and her heading was then approximately 285 degrees; that the other vessel ("Hellenic Beach") was about a mile or two away, about 45 degrees on her starboard bow; that he had called Captain Ecklund's attention to the other ship before they had passed the Lightship; that after they had passed it Captain Ecklund ordered a change of course left to 317 degrees, to which the helmsman relied: (S. M. p. 170) "You mean right captain", and that he, Griffin, then added: "Yes, that's right, you will have to come to the right". Griffin testified, further, that Captain Esklund repeated the command to come hard left, and the helmsman obeyed the order; that at that time the ships were only half a mile apart; that he (Griffin) then went into the chartroom to check the course, and ascertained that the change of course should have been to the right, instead of the left; that he told this to Captain Ecklund, who then ordered the helmsman to come right, but the vessels were then less than 50 yards apart; that the master blew the two blasts on the whistle and gave the "hard right" order, but the collision ensued.

There is no dispute that under the then existing circumstances and conditions the "Exmouth" was the burdened vessel and the "Hellenic Beach" the privileged one, for at page 21 of their brief, the proctors for the former admit that she (the "Exmouth") "unquestionably was in open and apparent violation of International Rule 19 which states 'when two steam vessels are crossing so as to involve risk of collision, the vessel which has the other on her starboard side shall keep out of the way of the other' ". The "Exmouth" not only failed to keep out of the way of the "Hellenic Beach" in clear violation of Rule 19, supra, (33 U. S. C. sec. 204) but her master navigated her in such a faulty manner as to make the collision inevitable. There was testimony to the effect that Captain Ecklund was intoxicated during his aforementioned supervision of the

navigation of the "Exmouth" but, regardless of the cause of his faulty navigation, there appears to be no doubt that he operated the "Exmouth" in clear violation of International Rule 19 (33 U. S. C. sec. 204).

Let us see what those charged with the navigation of the "Hellenic Beach" were doing all this time. Captain Macris, her master, testified that sometime after she dropped her pilot he saw two masthead lights and a green light of a vessel, which later proved to be the "Exmouth" from two to four points on his port bow, at a distance of about a mile and a half, and that he expected the vessel to turn right while he maintained his course and speed. As he said, (page 27 of the minutes of the trial) "Under the rules I had to hold my course and speed, and the other ship had to turn right and show me the red light after I showed it to her." He stated, further, that he blew a one-blast signal when he was less than a mile away, but that there was no answer from the "Exmouth"; that at three quarters of a mile he blew another one-blast signal, and the "Exmouth" responded with a two-blast reply; that at about that point he sensed that there was danger of a collision, put his helm hard right, and signalled to the engine-room for full speed astern. The order was carried out, but almost immediately thereafter the collision took place.

On cross examination he was questioned concerning his testimony taken by deposition on June 14, 1949, nine days after the accident and admitted that he then testified as follows:

(S. M. p. 50)

"Q. I shall read to you now from page 11:

"Q. Did you blow any whistles? A. I little while later when I first thought the distance was shorter and she did not change course as she had to I blew my whistle one blast. I wanted to tell her to keep out of my way'.

Q. Do you remember being asked that question and making that answer? A. Yes.

Q. Do you remember being asked this question:

'Q. How far away was she at that time, about? A. A little more than half a mile.' Do you remember that? A. If I said so I admit it."

A sketch was then offered and received in evidence, marked Respondents' Exhibit "C", showing the position of the two vessels, and containing these words in Captain Macris' handwriting: "Approximate distance one half mile" (S. M. p. 52)

The cross examination continued: (S. M. p. 52): "Do you remember on cross examination being asked this question, and I read to you now from page 25, about three-quarters of the way down:

'Q. At that time how far were you from the Exmouth in your opinion? A. About when, the second blast? "Q. When you sounded your second one-blast signal? A. May be a quarter of a mile'.

Do you remember being asked those questions and making those answers? A. If it is there, yes."

And further, at page 53 of the minutes of the trial:

"Q. Now on page 26 of your deposition I read to you and ask you if you remember being asked this question:

'Q. I think you said that your best estimate was then about a quarter of a mile, "and you were discussing then the distance between the ships at the second one blast signal, and you said: 'A. Yes, about a quarter of a mile when I blew the second blast'.

Do you remember being asked that question and making that answer? A. I don't remember but maybe I said it."

Following is further testimony of Captain Macris (S. M. p 54):

"Q. Now, captain, you testified before the Coast Guard, did you now? A. Yes, sir.

Q. And that was on June 8, three days after the collision? A. Yes.

Q. Your recollection was still better then, wasn't it, than it was at the time of the deposition? A. Yes.

* * *

Q. Were you asked these questions at that time:

'Q. Coming to the first one-blast signal, how far were you apart? A. Perhaps half a mile.

Q. What was the bearing of your ship then, was she still on the same position on your bow? A. Yes, in the same position on my port bow, maybe three points.

Q. In other words, the bearing of your ship had not changed any? A. I had no time to take bearings.

Q. I am speaking of your estimation watching the ship. You did not consider the bearing to be changed? A. Yes.

Q. She remained on your starboard bow showing her green light? A. Yes. (counsel agreed that there was an error in the transcription of the word "starboard" in the last question; it should have read "port".)

Q. That is the time you blew one blast? A. That is right.

Q. You were about a half a mile apart. A. Yes.'

Do you recall that testimony, Captain? A. Yes.

Q. Was it correct? A. Everything that is in there is correct as to what I say." (matter in parenthesis added)

The "Hellenic Beach", as the privileged vessel, was required, under Article 21 of the International Rules (33 U. S. C. sec. 106), to "keep her course and speed," and had the right to expect the "Exmouth" as the burdened vessel, to keep out of her way, as she was obliged to do under Article 19 of the International Rules (See U. S. C., sec. 104) C. F. Marsden's Collisions at Sea (9th Ed., 934) pp. 375-380; Le Boyteaux, Rules of the Road at Sea (1920) p. 133. But the "Hellenic Beach" was likewise bound by the International Rules, Articles 27 and 29 (33 U. S. C. sections 112 and 121, respectively) which reads as follows:

Article 27 "In obeying and construing these rules, due regard shall be had to all dangers of navigation and col-

lision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.

Article 29. Nothing in these rules shall exonerate any vessel or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout,, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case."

Did Captain Macris, in his navigation of the "Hellenic Beach", exercise the care, prudence and judgment required of him under Articles 27 and 29, supra? In my opinion he did not. His testimony at the Coast Guard hearing and at the taking of his deposition, both of which occurred shortly after the collision, when his recollection of the events in question was undoubtedly more vivid than it was at the trial, more than five years thereafter, satisfies me that the "Hellenic Beach" and the "Exmouth" were only half a mile apart when the former sounded her first one-blast signal and only a quarter of a mile apart when the second was sounded, immediately after which Captain Macris heard the "Exmouth's two-blast signal and ordered his vessel's helm hard right and her engines full astern. It must be noted that the vessels were approaching each other at a combined speed of over twenty knots, at night, and at a time when, by his own admission, it was difficult to judge distances. In my opinion the master of the "Hellenic Beach" was guilty of a navigational fault when he failed to take affirmative action when the vessels were only half a mile apart. Instead of sounding a one-blast signal at that time, as he did, he should have realized that the situation confronting him was fraught with imminent danger, and should have sounded the danger signal and ordered her engines full speed astern.

Captain Macris' testimony (pages 28 and 29 of the S. M. of the trial) amply supports the conclusion that when

the second one-blast signal was sounded the vessels were in extremis, and yet he did nothing to avoid the collision which was then so imminent.

Proctors for the "Exmouth" argue that the decision in the case of Rivera vs. American Export Lines, Inc., and Hellenic Lines, Inc., owners, respectively, of the "Exmouth" and the "Hellenic Beach", holding both vessels at fault, is determinative of the case at bar. In that case, brought in the Southern District of New York, Rivera, a member of the crew of the "Exmouth" sued the owners of both vessels to recover damages for personal injuries which he sustained as the result of the aforementioned collision. He recovered a judgment of $90,000 against both defendants.

Proctors for the "Hellenic Beach" contend, on the contrary (1) that the issues in the Rivera case, differed from those in the instant case, and (2) that as a result of a conference in the Rivera case, held before Judge Irving R. Kaufman, and called for the purpose of attempting to effect a settlement thereof, a stipulation was entered into providing that the decision in the case at bar would serve to determine the Rivera case. The second point of contention may be dismissed without discussion since the Rivera case was not settled. It went to trial and judgment, and a verdict was rendered against both defendants for $90,000.00 half which was paid by each defendant. No appeal was taken.

The "Hellenic Beach" proctors' first contention, to wit, that the issues in the Rivera case and the instant case are not the same, is inconsistent with the position which they took at a pre-trial conference before Judge Leibell in the Rivera case, in which they sought to use certain depositions taken in the case at bar. In his decision (13 F. R. D. 27) Judge Leibell said, at page 28: "*Rivera and Hellenic contend that the issues as to liability are identical in the two actions and that for that reason the deposition, should be received in evidence in this action.*" and, at page 29, "The memoranda submitted by counsel indicate that the same

negligence that resulted in plaintiff's injuries allegedly caused the damage to the vessels. *The same set of facts and circumstances operated to bring about the collision, which resulted in damage to the vessels* and the injuries to the plaintiff." (Emphasis added.)

It is apparent that Judge Leibell agreed with the argument advanced by the proctors for the "Hellenic Beach" in that case, for, in granting the application for leave to use the depositions, he said at page 30: "The answers of the respective defendants (the parties herein) each assert a claim over against the other for indemnity; *their interests are clearly antagonistic, to the same extent as if one were suing the other.* Under those circumstances there appears to be no good reason for denying to Hellenic Lines the right to use the depositions as part of Hellenic's proof against Export in this Rivera action." (emphasis and matter in parenthesis added) It would appear, then that the verdict in the Rivera case is dispositive of the issues in the case at bar.

In view of the foregoing I find both vessels at fault. The intervening cargo owners are entitled to an interlocutory decree in their favor.

Submit findings of fact, conclusions of law and decree in conformity herewith.

Dated: September 28, 1955.

/s/ J. RAYFIEL,
United States District Judge

Appendix B

(Opinion of United States Court of Appeals, for the Second Circuit)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 26—October Term, 1957.

(Argued October 10, 1957 Decided January 15, 1958.)

Docket No. 24518

HELLENIC LINES, LTD., owner of S. S. Hellenic Beach,
Libelant-Appellant.

—v.—

S. S. EXMOUTH, her engines, boilers, etc., and
AMERICAN EXPORT LINES, INC.,
Respondents-Appellees.

AMERICAN EXPORT LINES, INC., as owner of S. S. Exmouth,
Libelant-Appellee.

THOMAS KENWORTHY'S SONS, et al.,
Cargo Intervenors.

—v.—

S. S. HELLENIC BEACH, her engines, boilers, etc.,
and HELLENIC LINES, LTD.,
Respondents-Appellants.

Before:

CLARK, Chief Judge, and LUMBARD and MOORE, *Circuit Judges.*

Appeal from the United States District Court for the Eastern District of New York, Leo F. Rayfiel, *Judge*.

In Admiralty.

Libel filed by Hellenic Lines, Ltd., against S. S. Exmouth, her engines, boilers, etc., and American Export Lines, Inc. for damages resulting from a collision between the S. S. Hellenic Beach and the S. S. Exmouth. Thomas Kenworthy's Sons, *et al.*, as cargo intervenors, filed a petition of intervention. American Export Lines, Inc. filed a cross-libel against the S. S. Hellenic Beach and Hellenic Lines, Ltd. From a decree, 134 F. Supp. 546, directing that Hellenic Lines, Ltd. recover from the S. S. Exmouth, *in rem*, and/or American Export Lines, Inc., *in personam*, one-half of its damages including one-half of whatever amount it had to pay to the cargo intervenors; that American Export Lines, Inc. recover from the S. S. Hellenic Beach, *in rem*, and/or the Hellenic Lines, Ltd., *in personam*, one-half of its damages; and that Thomas Kenworthy's Sons, *et al.* recover from the S. S. Hellenic Beach, *in rem*, and/or Hellenic Lines, Ltd., *in personam*, their cargo damages, the libelant appeals.

Reversed.

Wilbur E. Dow, Jr., New York, N. Y. (Raymond W. Mitchell, Sonya I. Livshin, and Dow & Stonebridge, New York, N. Y., on the brief), *for Libelant-Appellant, Hellenic Lines, Ltd., owner of S. S. Hellenic Beach.*

James M. Estabrook, New York, N. Y. (Kenneth Gardner, Walter A. Darby, Jr., and Haight, Gardner, Poor & Havens, New York, N. Y., on the brief), *for Respondent-Libellant-Appellee, American Export Lines, Inc.*

Charles A. Van Hagen, Jr., New York, N. Y. (Bigham, Englar, Jones & Houston, New York, N. Y., on the brief), *for Cargo Intervenors-Appellees, Thomas Kenworthy's Sons, et al.*

MOORE, *Circuit Judge*:

Shortly after two o'clock in the morning of June 5, 1949 the S. S. Hellenic Beach, owned by Hellenic Lines, Ltd. (libelant-appellant, referred to as "Hellenic"), collided near the entrance to Delaware Bay with the S. S. Exmouth, owned by American Export Lines, Inc. (respondent libelant-appellee, referred to as "Exmouth").

A libel was filed by Hellenic against Exmouth and a cross-libel filed by Exmouth against Hellenic. In their respective answers Hellenic and Exmouth each accused the other of being at fault. Upon the trial, Thomas Kenworthy's Sons, *et al.*, cargo intervenors, obtained a stipulation that they would be entitled to an interlocutory decree for damage to cargo (some 300 bales of rock wool) on board the Exmouth should the court hold that Hellenic was solely at fault or that there was mutual fault. The trial court held both vessels at fault. From an interlocutory decree adjudging that Hellenic and Exmouth each recover one-half of their respective damages, including cargo damages, against the other, Hellenic and Exmouth appeal.

Hellenic is a Liberty ship, gross tonnage 7207 tons, 2500 horsepower and a maximum speed of $10\frac{1}{2}$ to 11 knots. Exmouth is a Victory ship, 8500-ton class and a maximum speed of some 17 knots. Hellenic was carrying a cargo of 5,000 tons of grain and 300 tons of general cargo; Exmouth had about 133 tons of cargo on board.

Less than a half hour before the collision Exmouth, bound from New York to Philadelphia, was anchored because of fog approximately one and one-half mile southeast of Overfalls Lightship near the entrance of Delaware Bay. At about ten minutes before 2:00 A. M. she weighed anchor and proceeded in a westerly direction passing the lightship about one-quarter mile south. At approximately the same time Hellenic, which had stopped to drop its river pilot at a point some 1.4 miles in a northwesterly

direction (290° true) from the lightship, resumed its course (124° true) towards the ocean. Prior to the collision each vessel observed the lights and the course of the other although there is a fairly substantial difference in the estimate of the miles they were apart at the time. Visibility was about five miles and there was a northwesterly tidal current of over two knots.

On the bridge of Hellenic were the master, the second mate and the helmsman. The Hellenic observed the masthead lights and the green starboard light of Exmouth about 2 to 4 points on her port bow. On the bridge of Exmouth were the master, the third mate and the helmsman. The Exmouth observed the lights of Hellenic which was showing its red port light about 4 points on the starboard bow.

Under the rules of the road Hellenic was clearly the privileged vessel (Art. 19, 33 U. S. C. A. § 204). Exmouth was the burdened vessel and under a duty to keep clear of Hellenic and to give way. On the trial the Exmouth Captain himself admitted that "the Exmouth had to keep out of the way, we were the burdened vessel," and Exmouth's third mate said that the rules required Exmouth "To give way, to stop engines or to reverse." She engaged in none of these operations but continued on at a speed of 15½ to 16 knots.

As the vessels approached each other the Hellenic blew one blast when the ships were about one-half mile apart signifying a port-to-port passing. This signal being unanswered by Exmouth, Hellenic blew another blast when they were about one-quarter of a mile apart. Exmouth then blew two blasts. Because of this cross-signal Hellenic put her helm hard right and her engines full astern. There was also testimony that she blew several short blasts as an alarm signal. Exmouth continued on without slackening her speed and while crossing Hellenic's bow was struck by Hellenic somewhat abaft her beam in the vicinity of Exmouth's number 4 hold, at an angle estimated at about

110°. Although Hellenic's bow cut into Exmouth's side the ships did not lock and Hellenic fell off astern of the Exmouth.

After Hellenic was sighted by Exmouth there was considerable confusion on Exmouth's bridge. Being the burdened vessel it was Exmouth's duty to keep clear of Hellenic. Had Exmouth veered to the right in a northerly direction a port-to-port passing could have been effected. This should have been normal procedure regardless of the presence of Hellenic because the pilot boat and Exmouth's ultimate destination were toward the north. Continuation of a due westerly course would have caused Exmouth to run ashore in a very short time. The Captain of Exmouth, however, gave the command to come to the left. The helmsman said "You mean right, Captain" and immediately the third mate added "Yes, that's right, you will have to come to the right." The Captain, nevertheless, persisted by saying "Hard left" and the helmsman obeyed these orders. If Exmouth had turned to the right at the time the Hellenic was observed, the collision could undoubtedly have been avoided. Finally, when the vessels were but a short distance apart the Exmouth Captain ordered the helmsman to come to the right but too late to avoid collision.

The fault of Exmouth was clearly stated in the opinion of the trial court as follows: "The 'Exmouth' not only failed to keep out of the way of the 'Hellenic Beach' in clear violation of Rule 19, *supra* (33 U. S. C. sec. 204), but her master navigated her in such a faulty manner as to make the collision inevitable. There was testimony to the effect that Captain Ecklund was intoxicated during his aforementioned supervision of the navigation of the 'Exmouth' but, regardless of the cause of his faulty navigation, there appears to be no doubt that he operated the 'Exmouth' in clear violation of International Rule 19 (33 U. S. C. sec. 204)."

The trial court, however, also found that Hellenic was at fault. In his opinion he said that Hellenic "did nothing to

avoid the collision which was then so imminent" and found that she was "bound to take the necessary precautionary action to avoid the collision under the special circumstances of the situation * * *" The testimony is undisputed that Exmouth did not diminish her speed and that her navigation at the time of approaching danger was highly confused. The evidence is clear that it was Hellenic that took such actions as were possible in view of Exmouth's navigation in an endeavor to avoid a collision. The conclusion is inescapable that Exmouth was solely at fault.

Under ordinary circumstances Hellenic, as the privileged vessel, was entitled to maintain her course and speed. If Hellenic had to speculate that Exmouth would not obey the rules and engage in avoiding action on that assumption, the rules might as well be discarded. Navigation would be reduced to a game of bluff (*Wilson* v. *Pacific Mail S. S. Co.*, 276 U. S. 454; *The Delaware*, 161 U. S. 459; *National Bulk Carriers* v. *United States*, 2 Cir. 1950, 183 F. 2d 405; *Pacific-Atlantic S. S. Co.* v. *United States*, 4 Cir. 1949, 175 F. 2d 632). Exmouth's duty was well defined in *The Nereus*, 23 Fed. Rep. 448, 455, S. D. N. Y. 1885, the court saying: "A steamer bound to keep out of the way of another steamer by going to the right, * * * has no right, when under no stress of circumstances, but merely for her own convenience to give the other steamer a signal of two whistles, importing that she will go to the left, unless she can do so safely by her own navigation, without aid from the other, and without requiring the other steamer to change her course or her speed. Otherwise she would be imposing upon the latter steamer more or less of the burden and the duty of keeping out of the way, which by statute is imposed on herself."

This does not mean that the last clear chance rule strongly advanced by Exmouth is to be ignored. Its application, however, depends upon the facts. Here Exmouth had ample room and time in which to maneuver to avoid

the collision. Hellenic had every reason to believe that Exmouth would keep clear. Only when Hellenic heard Exmouth's two blasts was there any indication to the contrary. Even then it was Hellenic which reversed at full speed. Exmouth did nothing to avoid a collision although its two blasts showed consciousness of danger. Upon the facts the last clear chance rule cannot be availed of by Exmouth to create a mutual liability situation.

Exmouth and the court below rely heavily upon a case brought against American Export Lines, Inc., and Hellenic Lines, Inc., by Rivera, a seaman on the Exmouth, for injuries sustained in the collision as establishing mutual fault and liability. The trial court found as a conclusion of law that the verdict for personal injury damages in that case "is depositive [sic] of the issues, in this case." In the *Rivera* case, plaintiff, Rivera, sought judgment against Exmouth and Hellenic. Both Hellenic and Exmouth, in their *Rivera* answers, as a "separate, partial and complete defense" denied their own liability and alleged: (1) fault on the part of the co-defendant; (2) that "if any liability for such damage should be adjudged against defendant," it would be entitled to an indemnity from the other; and (3) that all liability should be borne by the other. No cross-claim or third party complaint was filed nor did the present parties treat this seaman's action as a real adversary proceeding.

The party seeking to invoke the doctrine of estoppel by judgment or collateral estoppel must show (1) that the issue which his opponent wishes to litigate has already been completely adjudicated and (2) that such adjudication was rendered in a proceeding where the two parties were adversaries. See *Geo. A. Fuller Co.* v. *Otis Elevator Co.*, 245 U. S. 489 (1918). Neither condition is met here. In the first place the causes of action are not the same. The *Rivera* action was brought for personal injuries. The in-

stant proceeding is one for collision damage brought in admiralty. In the *Rivera* action there would have been no occasion for the application of the doctrine of Major-Minor fault or of error *in extremis*, both integral parts of the admiralty law relating to collision liability.

Furthermore, libelant cannot be deprived of litigating the hull damage issue in admiralty and in an adversary proceeding merely because a stranger to that action elected to join it as a co-defendant in a personal injury action. In the present case neither bar nor estoppel was pleaded. To the contrary the parties fully tried the case on the merits. The *Rivera* judgment only awarded personal injury damages against both defendants. *Employers Liability Ins. Co.* v. *Post & McCord*, 286 N. Y. 254 and *Yellow Cab Co. of D. C.* v. *Janson*, D. C. 1949, 179 F. 2d 54, do not provide precedent for the cross-libellant's argument that the joint *Rivera* judgment prevents further litigation of the mutual liability issue in the subsequent hull damage trial. Had either Hellenic or Exmouth sought to recover from the other its portion of the amount paid to Rivera those cases might have been authority for the proposition that the *Rivera* judgment estopped the parties from raising the issue of mutual liability but this is not such a suit. *McAfoos and Neff* v. *The Canadian Pacific Steamships, Ltd.*, 2 Cir. 1957, 243 F. 2d 270, dealt only with the question of election between admiralty and law where the issues were identical. It does not bear upon the problem here.

The parties here did not litigate *inter se* the issue of negligence in the *Rivera* case, and had no intention of doing so. In fact counsel for the Hellenic Lines, at the pre-trial conference in *Rivera*, were willing to contribute to any recovery which the seaman might be awarded, provided that if Exmouth were held fully liable in the collision suit. Hellenic would recover its contribution. And apparently one other claim was actually settled on this basis.

That the answers of both parties in the *Rivera* case sought to put the blame on the other is no bar. "* * * where

a person is injured by the concurrent negligence of two tortfeasors who are joined in one action, the fact that each of them attempts to show that the other was solely responsible for the accident or that the other alone was negligent does not make the issue of negligence res judicata in subsequent proceedings between them * * *" Restatements of Judgments § 82, comment (b). Nor does the fact that the parties had an opportunity to litigate the issue of negligence *inter se* in the *Rivera* action bar the present libel. The doctrine of collateral estoppel "*does not mean that questions which were not, but might have been raised in the former action cannot be litigated in the second action, or that the subsequent action is barred.*" (Emphasis in the original.) *Speed Products Co.* v. *Tinnerman Products*, 2 Cir., 1955, 222 F. 2d 61, 67. See also: *Commissioner of Internal Revenue* v. *Sunnen*, 333 U. S. 591 (1948); Restatement of Judgments § 68 (1942).

Nor is Judge Leibell's decision (13 F. R. D. 27) allowing the use in the *Rivera* matter of depositions taken in the instant case, and relied on by the trial court, inconsistent with our present holding. The primary factual issues underlying the two cases were sufficiently similar to allow the use of these depositions; but the inferences to be drawn from these primary facts in the two cases and the rules of law applicable to each, present no real identity of issue so as to operate as an estoppel by judgment.

Decree reversed. The Exmouth is held solely liable and the case is remanded for further proceedings.

LUMBARD, *Circuit Judge* (concurring):

I concur in Judge Moore's opinion. I wish, however, also to record my agreement with the views of Judge Clark regarding the unwarranted delays in the course of this litigation.

CLARK, *Chief Judge* (dissenting):

Admittedly the Exmouth was navigated negligently. But admittedly, also, the Hellenic's navigators made no attempt to slow down or otherwise avoid the accident until it was too late. Perhaps the circumstances excused them, but quite clearly there was a question for the trial court whether or not the Hellenic's crew was negligent in failing sooner to take a course of action to avoid the collision. In retrospect it is apparent that when the ships were half a mile apart they were on a crossing course. This fact should have occurred to the crew of the Hellenic, for at this distance the green starboard lights of the Exmouth clearly were visible to them. Nevertheless the Hellenic continued on the same course at unabated speed. Not until the ships were less than one-quarter mile apart did the Hellenic attempt to avoid the collision by turning right and reversing engines. The court below, obviously in a much better position than we to judge the credibility of the testimony, determined that the navigator of the Hellenic depended unjustifiedly on the expected action of his opposite number and continued without slackening speed after he was or should have been aware of the danger. This is a realistic and reasonable decision on the facts and, in my opinion, requires affirmance. The conduct thus found is as bad for safety at sea as it would be for an autoist to rely on a green light at a street intersection when he sees that a crossing auto is not heeding a red light. *Lady Nelson, Ltd.* v. *Creole Petroleum Corp.*, 2 Cir., 224 F. 2d 591, 593 certiorari denied 350 U. S. 935.

In addition, the prior verdict and judgment in *Rivera* v. *American Export Lines*, Civ. No. 53-207, D. C. S. D. N. Y., May 2, 1952, clearly established the Hellenic's negligence; and that finding should be *res judicata* in this case. There, in an action for personal injuries brought against these two parties by an Exmouth seaman, he charged concurrent

negligence, which of course he had to prove, and did in getting a $90,000 verdict, paid one-half each by these defendants. Each denied its own negligence and as a second defense pleaded the other's negligence, adding, *e.g.*, "and if any liability for such damage should be adjudged against defendant, Hellenic Lines, Ltd., the defendant, Hellenic Lines, Ltd., would be entitled to indemnity from said defendant, American Export Lines, Inc., and all liability should be borne by said American Export Lines, Inc., instead of defendant, Hellenic Lines, Ltd." The issues of negligence appear to have been thoroughly explored and the absence of a formal cross pleading seems of little moment because the codefendants were obviously adverse parties. Requiring a formal cross pleading (*i.e.*, with a prayer for some relief) seems to me overtechnical when the circumstances show the issues to have been actually tried—a formality not in keeping with federal pleading, where under the well-known Rules 54(c), F. R. Civ. P., the demand for judgment is no limitation when the stage of potential default is passed.

The opinion also suggests that the issue of hull damages was not before the court and jury in the *Rivera* case and therefore neither party is estopped here. This seems to me a totally unwarranted limitation on the doctrine of collateral estoppel, for the cause of both the personal injury and the property damage was concurrent negligence which was adjudicated. Once such negligence is adjudicated, it is settled thereafter, whatever be the court where the issue is later raised or the nature of the damages there claimed. See, *e.g.*, *Little* v. *Blue Goose Motor Coach Co.*, 346 Ill. 266, 178 N. E. 496; *Fleischer* v. *Detroit Cadillac Motor Car Co.*, S. Ct., 165 N. Y. S. 245; and other cases cited in 2 Moore's Federal Practice 379, note 88 (2d Ed. 1948) and the annotation 104 A. L. R. 973. The only possible qualification is that, even if the Hellenic was negligently navigated, she still might be excused from liability under the "major-minor" fault rule in admiralty. But that was rejected—

and quite properly so—by the trial judge here, leaving collateral estoppel naturally effective and requiring the judgment rendered.

While I thus accept the district court's conclusion and judgment I am constrained to feel that the long delays in this litigation require comment. The libel itself was promptly filed within two weeks of the accident. Then ensued a period of inaction for five years and seven months until trial. Perhaps counsel had reasons not apparent to us for this delay—amounting, indeed, to nearly three years after the completion of the seaman's jury trial; but the current public concern with legal delays hardly envisages such reasons. At any rate the court took eight and one-half months for its opinion, based on findings which, it does seem, would have been fresher and clearer to it at the close of the evidence.[1] Then, for reasons not apparent, since its opinion was quite adequate,[2] the court called for proposed findings and took an additional fifteen months to make findings which summarize but do not add to the opinion. This last quite inexplicable delay in particular is of a kind which has caused us continued concern in our many decisions enforcing the civil rule for the prompt entry of judgment.[3] Another year will be consumed by the appeal. I suggest that none of us can feel proud of this record.

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[1] *Polarus S. S. Co. v. The Sandefjord*, 2 Cir. 236 F. 2d 270, 272, certiorari denied *Viriks Rederi A/S v. Polarus S. S. Co.*, 352 U. S. 982; *Hecht, Levis & Kahn, Inc. v. The President Buchanan*, 2 Cir. 236 F. 2d 627, 629; *Grace Line v. The C. Hayward Mesick*, D. C. S. D. N. Y., 150 F. Supp. 425, affirmed 2 Cir., 248 F. 2d 736.

[2] See F. R. 52(a) as amended and *Hecht, Levis & Kahn, Inc. v. The President Buchanan*, *supra* note 1, 2 Cir., 236 F. 2d 627.

[3] See, *e.g.*, *United States v. Wissahickon Tool Works*, 2 Cir., 200 F. 2d 936; *F. & M. Schaefer Brewing Co. v. United States*, 2 Cir., 236 F. 2d 889, 893, certiorari granted *United States v. F. & M. Schaefer Brewing Co.*, 353 U. S. 907, *Matteson v. United States*, 2 Cir., 240 F. 2d 517; *Edwards v. Doctors Hospital*, 2 Cir., 242 F. 2d 888; *Repan v. American President Lines*, 2 Cir., 243 F. 2d 870.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 922

AMERICAN EXPORT LINES, INC., as Owner of S. S. EXMOUTH,

Petitioner,

THOMAS KENWORTHY'S SONS, *et al.*,

Cargo Intervenors,

against

S. S. HELLENIC BEACH, her engines, boilers, etc., and HELLENIC LINES, LTD.,

Respondent.

HELLENIC LINES, LTD., Owner of S. S. HELLENIC BEACH,

Respondent,

against

S. S. EXMOUTH, her engines, boilers, etc., and AMERICAN EXPORT LINES, INC.,

Petitioner.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

American Export Lines, Inc., as owner of the S. S. EXMOUTH, has petitioned for a Writ of Certiorari to review the determination of the Court of Appeals for the Second

Circuit which reversed the decision of the District Court and found the S. S. EXMOUTH solely at fault for the collision with the S. S. HELLENIC BEACH. Respondent herein, Hellenic Lines, Ltd., respectfully opposes the granting of such writ.

Question Presented

Whether this Court, contrary to the expressed intent of Rule 19, should grant review to a decision of the Court of Appeals which in no manner departs from the accepted and usual course of judicial proceedings and which is in full accord with the applicable decisions of this Court and which is consistent with decisions of other Courts of Appeals.

Statement

Respondent accepts the recital of the facts leading to collision between EXMOUTH and HELLENIC BEACH as set forth in the opinions rendered by the Court of Appeals (P. 23-34)* and the Admiralty trial court (P. 13-22) and in the findings of fact entered by that trial court (L. A. 295-296). Petitioner apparently cannot seriously dispute those statements of fact since, in light of the damning circumstances, petitioner has judiciously refrained from efforts to prove its vessel, EXMOUTH, free from fault for the collision with HELLENIC BEACH. The consistent defense of petitioner has been an attempt to magnify any real or imagined action or failure of action on the part of HELLENIC BEACH which, on hindsight, *might* have caused a collision, though not necessarily this collision. Through this argument, coupled with a thoroughly inconsistent approach to the legal effect of the jury award in a personal

* References to material contained in the appendices annexed to the Petition are indicated by P. followed by the page number. References to material contained in the appendix submitted by Libellant-Appellant below are indicated by L. A. followed by the page number.

injury adjudication, petitioner has attempted to achieve divided fault. Refusal by the Court of Appeals to accept those spurious arguments has resulted in the petitioner's unfounded requests for review by this Court.

Respondent submits that not only are there no considerations raised herein which affect the public interest or the settled state of the law, but there are no factors which bespeak a failure of justice, for the entire record establishes that the decision of the Court of Appeals was eminently correct, fully justified on the record, and logically and legally the only result attainable herein.

Argument

Petitioner has advanced several proposals by which it seeks to place this litigation within the purview of causes subject to review by this Court. By quantity, petitioner apparently hopes to overcome the inherent qualitative weaknesses of the following arguments:

I.

The petitioner contends that HELLENIC BEACH violated a rule of navigation by sounding a whistle signal and thereafter failing to act in accordance with that signal.

If petitioner's assertive repetition could make it so, the HELLENIC BEACH would be at fault. However, petitioner in aid of its argument studiously and necessarily ignores three basic facts which are clearly established in the record:

1. The District Court found, and the Court of Appeals concurred, that by reason of the wanton navigation of the EXMOUTH under the actual command of a disoriented and intoxicated master, the collision of the vessels was *inevitable*. The choice of words was the Court's; the finding is absolute as to the causation of and the liability for the collision.

2. Petitioner's knowledge of any whistle signals is derived solely from the testimony of respondent's officers that two one-blast signals were given preceding the collision. Not one person on watch aboard EXMOUTH heard the whistle signals of HELLENIC BEACH and, of necessity, no reliance was placed thereon by EXMOUTH.

3. HELLENIC BEACH, as the *privileged* vessel in a crossing situation, was statutorily entitled to hold—and indeed *burdened* with the obligation of holding her course and speed, which obligation she concededly fulfilled.

II.

The petitioner contends that HELLENIC BEACH was likewise at fault in failing to anticipate the erratic navigation of EXMOUTH and in failing to take evasive action when the vessels were one-half mile apart.

The trial court found that this was a legal fault of HELLENIC BEACH; the Court of Appeals reversed this conclusion.

We point out to the Court that insofar as the District Court found as a fact that the navigation of EXMOUTH made the collision inevitable, the subsequent determination that adherence by HELLENIC BEACH to course and speed contributed to the collision is a conclusion insupportable logically and without basis in law or fact. The Court of Appeals was fully justified in striking the latter contradictory conclusion of the trial court and in deciding the matter on the basis of the primary all inclusive finding of the fact of the inevitability of the collision. Petitioner's desperate attempt to equate this action by the Court of Appeals with an appellate trial *de novo* represents a fundamental misunderstanding of the role of a reviewing court.

We respectfully suggest to this Court that the argument of statutory violation advanced by petitioner raises two disturbing and unanswerable questions:

1. What evasive action on the part of a low-powered Liberty vessel will escape the unpredictable navigation of a high-powered juggernaut under the command of an alcohol-befogged master?

2. What would be the position of the privileged vessel if she, in violation of the statute, abandoned her course and speed, and the collision then occurred?

III.

The petitioner contends that the parties to the collision action were precluded from litigating the question of the sole fault of either vessel by a prior judgment entered against both vessels in favor of a seaman injured in the collision. No comfort is derived by petitioner from authorities cited for this proposition.

The trial court adopted petitioner's contention. The Court of Appeals rejected it out of hand.

Rather than labor the question, respondent adopts in full the carefully supported and documented reasoning of the Court of Appeals majority opinion as the most telling argument in opposition to the contention of the petitioner. It is an argument well founded in law and certainly applicable to the facts of this case. This is not an example of repetitive litigation. The seaman's action was brought before a jury on the civil side of the Court. The substantive rules of admiralty collision law had little or no application in the seaman's action. As a practical matter, the fundamental vessel defenses of Major-Minor Fault and errors *in extremis* were unavailable to this respondent in the seaman's action since under the substan-

tive law applicable to that action those doctrines were not defenses to HELLENIC BEACH as against the seaman. As a matter of strict law, the mere intervention of either defense by HELLENIC BEACH in the seaman's action might be interpreted as an admission of fault sufficient to permit entry of judgment against HELLENIC BEACH on the pleadings.

The issue of collateral estoppel was raised by petitioner only during trial of the present litigation some two and one-half years after the jury award made to the injured seaman. No effort was made in that interim to act upon this unique theory which now appears so eminently proper to the petitioner. Other actions which arose from the collision have been settled pending outcome of the admiralty collision action between the vessels, a disposition hardly consistent with petitioner's present stand.

Conclusion

Accepting at face value the petitioner's election of the issues which will control the granting or denial of the instant writ, respondent submits that the petitioner has failed totally to advance one reason why, in the public interest, this Court should invoke jurisdiction. Additionally, petitioner has advanced the most unsubstantial arguments in support of its personal claim of prejudice.

On the record presently before this Court and in the interest of substantial justice, respondent respectfully submits that the instant petition must be denied.

Respectfully submitted,

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Of Counsel.